MOORE IS LESS
JASON ZENGERLE, STANLEY KAUFFMANN, PASCAL BRUCKNER

BUSH'S JULY SURPRISE?
SPENCER ACKERMAN, MASSOUD ANSARI, and JOHN B. JUDIS

THE NEW REPUBLIC

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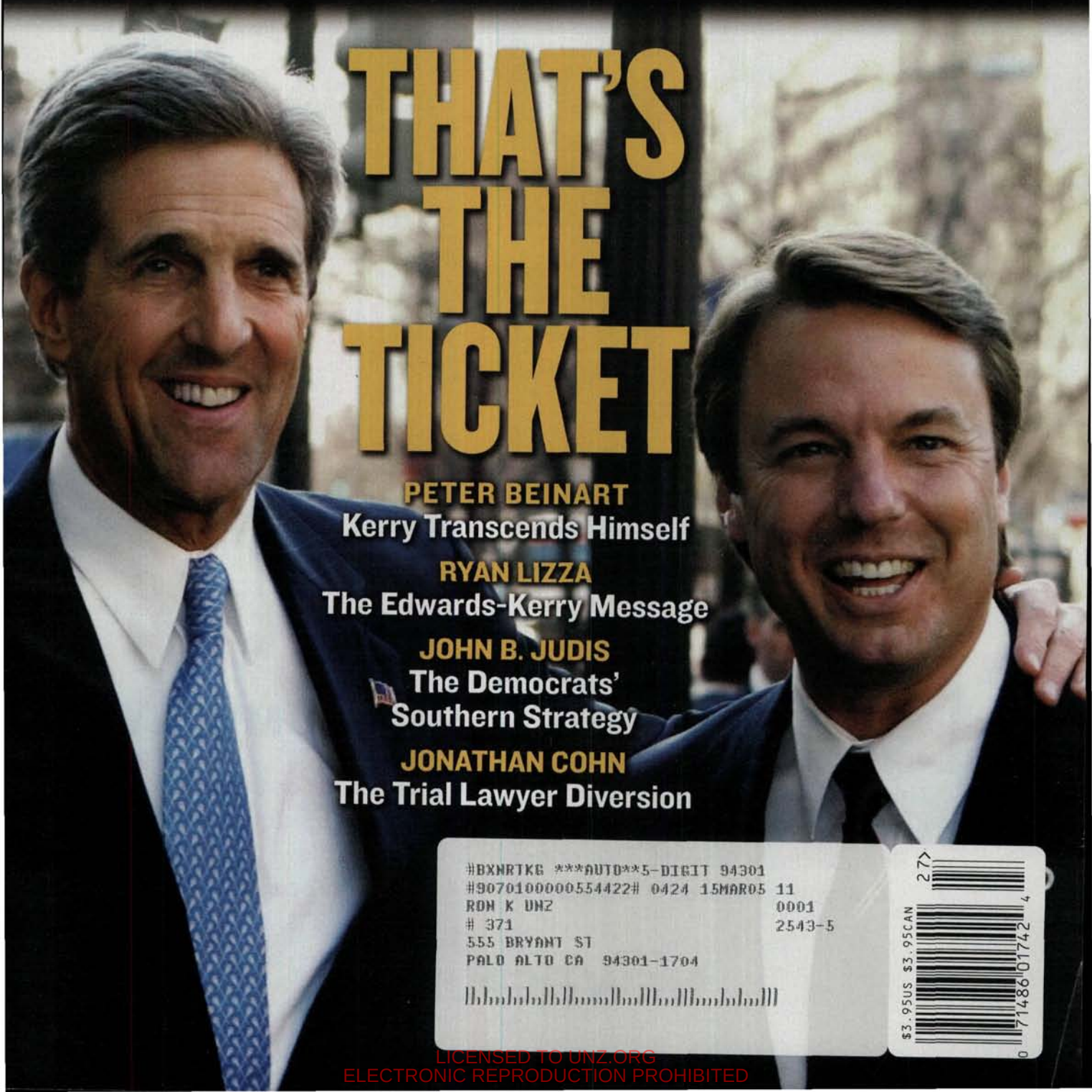

THAT'S THE TICKET

PETER BEINART
Kerry Transcends Himself

RYAN LIZZA
The Edwards-Kerry Message

JOHN B. JUDIS
The Democrats' Southern Strategy

JONATHAN COHN
The Trial Lawyer Diversion

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CORRESPONDENCE

DISCIPLINE AND PUNISH

JONATHAN COHN IS RIGHT THAT America's indifference to the human rights of those it incarcerates allows the vile abuse of prisoners ("Abroad at Home," May 24). But he is wrong that Senator Bob Dole and his supporters had a point with the Prison Litigation Reform Act (PLRA) of 1996. Dole's condemnation of a lawsuit (not a judicial order) complaining of "being served creamy peanut butter instead of the chunky variety" captured the imagination of journalists and pundits. It was also a lie. As Jon O. Newman, the former chief judge of the U.S. Court of Appeals for the Second Circuit, details in *Pro Se Prisoner Litigation: Looking for Needles in Haystacks*, that case never existed. The lawsuit Dole ridiculed concerned improperly charging a prisoner's account for items he never received. A man with severely limited funds wanted to make sure that the state did not arbitrarily take his money. That a politician would distort facts for political advantage is not surprising. That Cohn would quote that distortion is. When the PLRA passed, some supporters denied that it would allow human rights abuses to occur in U.S. prisons. But this is exactly what the PLRA has done. When a prisoner is assaulted by a guard, he or she must demonstrate "prior showing of physical injury" to receive compensation. A prisoner who faced fake electrodes and hood torture might have a hard time meeting the physical injury requirement. It is time for Congress to admit that the "facts" supporting the PLRA were lies and that it has done great harm to human rights.

DEBORAH M. GOLDEN
Staff Attorney
D.C. Prisoners' Legal Services Project
Washington, D.C.

RISK SURPLUS

IN "RUBINOMICS REDUX," JONATHAN Chait writes that budget deficits cause higher interest rates because of the crowding out of investment capital (May 24). This may be, but he omits the more obvious reason: higher risk. In private debt, the more leveraged the borrower, the higher the default risk. Lenders require additional returns for additional risk. This is achieved with higher interest rates. In public debt, there eventually comes a point at which no additional debt can be assumed without the borrower resorting to printing money to cover interest payments. At that point, inflation sets in, driving rates up. This problem of resorting to the printing press, or inflation risk in general, is the real problem of government securities, since default is theoretically impossible. The bogeyman is inflation; the rest is semantics.

JASON WOMBACHER
Jerusalem, Israel

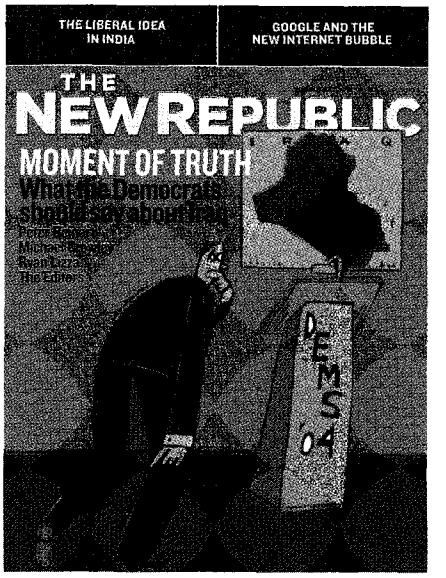
JANE OF COMMAND

MICHELLE COTTLE BLAMES THE Pentagon and the White House for for the abuse of Iraqi prisoners ("G.I. Jane," May 24). By that logic, wouldn't she also blame the pope for sexual abuse committed by priests and Kofi Annan for the oil-for-food scandal, and demand that both lose their jobs?

MARK MAZER
Boston, Massachusetts

TORTURED ARGUMENT

THREE SERIOUS DEFECTS RENDER Jeffrey Rosen's defense of preventive detention untenable ("Home Front," May 17). First, by supporting the creation of an "atmosphere of intimidation and trust" to "mine" suspects until their "intelligence value has been exhausted," Rosen wants to resurrect something we thought we'd left behind—the "third degree." Or, as they said at Abu Ghraib, "setting the conditions" that led to outright torture. Second, if the feds use preventive detention as a weapon in the war on terrorism, you can be sure every local prosecutor will want the same tool to "soften up" suspects of lesser crimes, and a fearful public might grant their wish. Finally, centuries of experience have taught us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MOMENT OF TRUTH
What the Democrats should say about Iraq
DEMS 04

that torture victims will say anything to end their pain, but that what they say will rarely be the truth. Rosen would have us torture hundreds of suspects in the hopes of obtaining the one tip that might prevent the next terrorist attack. I've not even mentioned habeas corpus, but, then again, neither did Rosen. He seems to have forgotten all about it.

DANIEL M. KOWALSKI
Austin, Texas

JEFFREY ROSEN RESPONDS:
Nothing in my article supported the use of torture, the third degree, the suspension of habeas corpus, or anything of the kind. I argued that America, like every Western democracy, is now developing systems of preventive detention for terrorism suspects, and congressional oversight is preferable to unilateral regulation by the executive branch or the courts. The abuses that have been revealed since the article was published tend to support the point. ■

Please address letters to Correspondence, **The New Republic**, 1331 H Street, NW, Suite 700, Washington, D.C. 20005; letters may also be sent electronically to letters@tnr.com. All letters should include the writer's full name, address, and telephone number; be typed double-spaced; and be fewer *than 200 words. Letters may be edited for space and clarity. Please do not send letters via fax.*

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Confidence Game

TRB FROM WASHINGTON

In choosing John Edwards as his running mate, John Kerry displayed a trait rare among politicians: true self-confidence. Nominees often use the veep selection to consolidate their control of the party. When Al Gore chose the moralistic Joe Lieberman, for instance, he signaled that it was now his Democratic Party, not Bill Clinton's. This year, Kerry must have been tempted to make a similar show of strength. Like Gore, his grip on the party could have used some shoring up. The Clintons—whose star power vastly outshines his—retain loyalists throughout the Democratic power structure, including Democratic National Committee Chairman Terry McAuliffe. In the primaries, the party's liberal activists, represented by groups like MoveOn.org, gave their hearts first to Howard Dean, then to Edwards. Kerry, while winning votes as the candidate best positioned to beat Bush in November, never won their love. By early July—after months of media stories about his charisma gap—he still hadn't.

Kerry, in other words, had reason to be insecure. And, in potential running mates Richard Gephardt and Tom Vilsack, he had two obvious balms. Gephardt would have been another Cheney—a bland elder statesman with no independent political agenda. And, not surprisingly, according to press reports, he was the contender with whom Kerry felt most comfortable. Vilsack would have been another Quayle—so obscure that Kerry would have gained stature in comparison. Neither man posed any conceivable threat, either on the campaign trail or in the West Wing.

If Gephardt and Vilsack would have obscured Kerry's deficiencies, Edwards exposes them: He's a better speaker than Kerry; he's got a more compelling life story; he has a more powerful critique of the president. Unlike Gephardt, he clearly would use the vice presidency as a stepping stone. Unlike Vilsack, he enjoys an independent base in the party.

In fact, if choosing Gephardt or Vilsack would have signaled Kerry's control of the party, choosing Edwards signals the party's control over him. For months, Democrats of all stripes have been pushing Edwards for the number-two spot—intruding on Kerry's tightly managed, highly secretive selection process with a media-savvy campaign to force the presumptive nominee's hand. In May, a Mason-Dixon poll showed that, with Edwards on the ticket, Kerry ran even with Bush in North Carolina; without him, he trailed by seven points. On June 14, a *New York Times* article titled "From the Senate, a Chorus Rises in Support of Edwards" quoted one senior Democratic aide saying, "If you could poll the Democratic caucus anonymously [about the vice-presidential choice], Edwards would win with thirty votes." Three days later, *The Hill* reported that 22 congressmen had sent Kerry a letter urging him to pick the North Carolina senator. Ten days after that, the Associated Press released a survey showing that, even in Gephardt's home state of Missouri, most Democratic county chairmen preferred Edwards. Finally, on June 30, a CNN, Gallup, and *USA Today* poll found that 32 percent of Democrats were "enthusiastic" about an Edwards pick, versus 19 percent for Gephardt and 3 percent for Vilsack. When Kerry finally selected the North Carolina senator, CNN's Jeff Greenfield commented that "this was a choice that, to some extent, was probably imposed on Kerry by voters in the Democratic primaries." An early Howard Kurtz article about the selection in *The Washington Post* was titled "The Media Get Their Man."

Having forfeited some control over his choice of running mate, Kerry is now about to forfeit some control over his campaign's message. Most veeps quietly shelve whatever independent vision or positions they had prior to joining the ticket so as to perfectly match the nominee. In this case, however, it is Kerry who is shifting his message in response to Edwards (see Ryan Lizza, "Two into One," page 10). In his speech announcing the selection, Kerry said, "As so many of you know, throughout the campaign, John talked about the great divide in this country—the 'two Americas'—that exists between those who are doing well and those who are struggling to make it from day to day. That concern is at the center of this campaign. It is what it is all about." A little later in the speech, he borrowed Edwards's signature phrase again, declaring that "we're going to win this fight by standing together, not as two Americas, but as one America."

Republicans will likely argue that Edwards's outsized influence reflects Kerry's weakness. But it is actually a sign of both political and governmental strength. In Iowa, remember, Kerry won in part by borrowing from Dean—sprinkling his stump speech with phrases like "bring it on," which echoed Dean's blunt, angry style. It was that new anger, combined with Kerry's preexisting national security bona fides and Washington experience, that vaulted him to victory. He is now doing the same thing with Edwards, swallowing his pride and again borrowing from a rival with a more compelling message. Once again, someone else provides the vision; Kerry provides the gravitas.

But this willingness to adapt isn't merely politically shrewd; it's also essential to good governance. Compare Kerry's style with the intellectually rigid Bush administration. After John McCain struck a chord in the 2000 Republican primaries, Bush could have adopted some of his reformist ideas, as Kerry has with Edwards, or as Bill Clinton did after Ross Perot championed deficit reduction in 1992. Instead, his administration has stuck with the same economic agenda—upper-income tax cuts—simply changing the justification for it as the economy has gone from strong to weak to (sort of) strong again. Its cold war encrusted, state-centric vision of national security didn't change, even after September 11. As insider accounts have detailed, Bush walls himself off from disconcerting information, fearing it will undermine his faith that the course he is pursuing is right.

Kerry's conduct suggests a different pattern. He has real flaws as a candidate and a leader. But he has responded to them by learning from others, even those who might threaten him. Kerry recognizes that he cannot beat Bush himself—that, to do so, he must bring in people who have skills he lacks. And, remarkably, he is willing to cede some control to gain their help. Far from weakness, this actually suggests genuine self-confidence—and a capacity for intellectual, political, and moral growth. It's a capacity this blustering, isolated, weak president has never shown.

PETER BEINART

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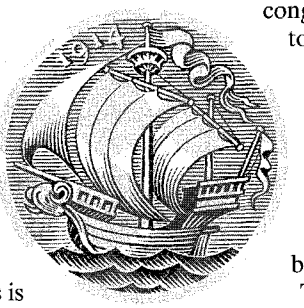
Lobby Hero

AN UNNAMED LOBBYIST quoted in *The Washington Post* last month said it all: "Anybody who's a good lobbyist in this town has gotten one or two provisions in it." "It" is the mammoth corporate tax bill, approved June 17 by the House and, in a slightly different version, by the Senate last month. The bill began as an attempt to eliminate $4 billion in tax breaks for American exporters, which were recently found to be in violation of World Trade Organization (WTO) provisions. The WTO ruling allows the European Union to impose escalating penalties on U.S. exports as long as the law remains unchanged.

But an attempt to offset the loss of these corporate tax breaks has turned into Christmas in July for K Street. The House bill, euphemistically titled the American Jobs Creation Act, is jam-packed with new tax breaks for everything from bow-and-arrow manufacturing to ceiling-fan imports. Other than a provision to cut the top corporate tax rate from 35 to 32 percent, none of these is very large, but they add up to $143 billion—call it fiscal irresponsibility by a thousand cuts. (The Senate bill is even worse, totaling $167 billion.) Each tax break is sponsored by a different myopic representative who claims, with a straight face, that his or her add-on is a minor, yet integral, element to getting the economy moving (as if it weren't already). And yet, it's hard to understand how spending $169 million to help Puerto Rican rum manufacturers or $35 million for tackle box–makers is the most efficient way to boost economic growth.

The special interest spending spree was so tempting that even 48 Democrats ended up supporting the legislation, thanks in part to such last-minute add-ons as a $9.6 billion buyout for the tobacco industry, a sweetener aimed at Southern Dems. (Had just half of those representatives joined their Democratic colleagues and the 23 Republicans who opposed the bill, they could have killed it.)

The bill employs a time-honored trick for making tax cuts look smaller than they really are: sunset provisions, which phase out cuts over the next decade. Combined with a few nips and tucks at various tax loopholes, the bill, we are told, will cost a mere $34 billion over ten years. But that's assuming the various tax cuts, structured as temporary relief, are allowed to expire. And that almost never happens in Washington. If all the add-ons are eventually renewed, as is likely, the bipartisan Joint Committee on Taxation says the total cost of the bill will come to a deficit-busting $224 billion. Just what America—facing the twin fiscal burdens of the war on terrorism and the looming retirement of the baby-boomers—doesn't need.



How does Congress get away with this? To find the answer, just head up Pennsylvania Avenue. In February, the White House openly criticized the bill, noting that it could open a raft of tax loopholes. In recent weeks, however, the administration has changed tack and offered its cautious support, saying in a June 17 statement that it would back any provision that removed the EU penalties. "The administration didn't want to step into the middle of a food fight and wind up irritating one camp or another," Dan Mitchell, a tax analyst at the Heritage Foundation, told the *Post*.

But it's a food fight of the Bush administration's own making. Pork-barrel spending is part of congressional life. It's Bush's job to rein it in—and, for three years, he hasn't even tried. He has never vetoed a spending bill. And his own tax cuts—the most recent of which will cost between $350 billion and $800 billion (depending on whether they are allowed to expire)—swamp even this latest example of congressional irresponsibility. In fact, his continued willingness to conflate K Street's interests with those of the American public has given congressmen a green light to do the same. Bush has consistently pushed bills through Congress that neither intellectually honest liberals nor conservatives can defend—the Medicare bill, the farm bill, the steel tariffs.

The latest tax cuts are opposed by think tanks and public interest groups from right to left, including the staunchly pro-GOP Heritage Foundation. But, in Bush's Washington, there's no prize for honesty, and there's no reason to do the right thing when you can't get punished for profiting off the bad. And so this latest outrage, it seems, will soon become law. ■

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NOTEBOOK

TRIAL LAWYERS WORSE THAN TERROR . . . MICHAEL MOORE MAKES AN ERROR

MAYBE THEY'RE PROJECTING

NO SOONER HAD DEMOCRATIC presidential hopeful Senator John Kerry announced that Senator John Edwards would be his running mate than the Republican National Committee posted on its website a lengthy opposition research report titled "Who is John Edwards?" But more than a few of the GOP report's boldface attacks had a familiar ring to them:

"...Unaccomplished and Inexperienced"

"Never Held Elective Office, Politics Took A Backseat To ... Career"

"New to Foreign Policy & International Issues"

"New to Understanding Legislation & Presidential Powers"

"Doesn't Mind Cashing ... Checks" from "Corporations, Pharmaceuticals, Insurance Companies"

"...Denounces Accounting Tricks, but Used Them in the 1990s"

We could swear we heard something similar about someone four years ago.

AMERICAN INDUSTRY TOUGH ON EDWARDS, SOFT ON TERRORISM

"TRIAL LAWYERS ARE THE PARIAHS of the business community, which is more frightened by them than terrorists, China, or higher energy prices."
—Jerry Jasinowski, president of the National Association of Manufacturers, quoted in a *New York Times* story about Kerry's selection of Edwards

SPECIAL ED REDUX

DURING THE 2000 PRESIDENTIAL campaign and Florida recount, THE NEW REPUBLIC lamented that Pennsylvania Governor Ed Rendell—the Democratic National Committee chairman at the time—suffered dismayingly frequent bouts of foot-in-mouth disease. Rendell famously castigated Gore's campaign strategy on election night

John Edwards

before discovering the election wasn't over. Alas, his condition is apparently chronic. To wit: "Did he look like he was ready to be president? Did he have in his resume enough in his background to have him deal with terrorism or these things? I think when people look at John Edwards, they say he's a terrific, bright young senator, he'll be something some day, but I don't think they see it now." Yeah, that's Rendell—just one day before he hosted the rally at which Kerry announced Edwards as his running mate.

COUNTERFACTUAL

MICHAEL MOORE SAYS HIS MOVIE *Fahrenheit 9/11* "is perhaps the most thoroughly researched and vetted documentary of our time." The filmmaker hired a team of fact-checkers—including the former head of *The New Yorker*'s vaunted fact-checking department—to scour the film for inaccuracies. The result, Moore has claimed, is an unassailable final product. He even told *Time* recently that he's "thinking of offering a $10,000 reward for anyone that can find a single fact that's wrong."

Critics have attacked *Fahrenheit 9/11*'s implication that the Bush administration gave the bin Laden family preferential treatment after September 11 and its insinuation that the United States went to war in Afghanistan so Unocal could build a natural gas pipeline, but Moore has repeatedly retorted that he made no assertions in the movie; he merely raised questions.

Fahrenheit 9/11 does, however, contain at least one factual error. After Moore details ties between the Saudi royals and the Bush family, the film shows Moore standing outside the Saudi Embassy in Washington, being questioned by a Secret Service Uniformed Division officer. "I didn't realize the Secret Service guards foreign embassies," Moore says to the officer. "Uh, not usually, no sir," the officer replies. Moore then moves on to other matters—leaving viewers with the impression that the Saudis are so close to President Bush that they're allowed to borrow his personal security service.

The problem is that, since 1970, the Secret Service's duties, by virtue of Public Law 91-217, include protection of foreign embassies. "We protect all of the roughly 400 diplomatic missions in the metropolitan Washington, D.C., area," Secret Service spokesman Charles Bopp told TNR. And, since the Secret Service officer Moore confronts in the film was stating a fact, someone from *Fahrenheit 9/11*'s fact-checking team should have called the Secret Service to check the accuracy of the officer's quote. We just hope that Moore follows through on his $10,000 challenge. He can make the check out to TNR.

AD NAUSEUM

ORDINARILY, WE'D BE FLATTERED to be cited as an authoritative

DAVID COWLES

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source in a presidential campaign's TV advertisement. But a new Bush campaign ad quotes TNR in a way that, while strictly accurate, amounts to a major distortion. The ad, unveiled in New Mexico last week, attacks John Kerry's foreign policy tome, *The New War*. "John Kerry says he's 'author of a strategy to win the war on terror' ... against the Japanese yakuza," the ad begins, as a crashing gong sets a goofy tone. "Never mentions Al Qaeda. Says nothing about Osama bin Laden. ... THE NEW REPUBLIC says Kerry's plan 'misses the mark.' And Kerry's focus? Global crime, not terrorism. How can John Kerry win a war if he doesn't know the enemy?"

It is true that TNR's Michael Crowley criticized Kerry's book for paying scant attention to weapons of mass destruction and Islamic fundamentalism, focusing instead on cyberwar, global financial fraud, and international crime syndicates ("Book Mark," February 9). But the Bush ad neglects to mention one key fact: Kerry published the book *seven years ago*. Instead, the ad is intended to give voters the impression that it's Kerry's *current*, post–September 11 anti-terror plan that focuses on Japanese gangs and never mentions Al Qaeda.

We don't mean to excuse Kerry's bad predictions, whose relevance he himself has elevated. ("I think we deserve a president who does see ahead," Kerry said, bragging about the book's foresight to Fox News earlier this year.) But arguing that, even today, Kerry "doesn't know the enemy" requires a good deal more evidence than our critique of his years-old book. (Besides, what was Bush doing about terrorism in 1997?) That said, we still intend to bill Bush for a cut of the ad buy.

DEPARTMENT OF CORRECTIONS

THE JULY 5&12 ISSUE OF TNR WAS actually Volume 231, Numbers 1 and 2, not merely Number 1. ■

TNR.commentary

&c.

NOAM SCHEIBER

AMBITION CAN CREEP AS WELL AS SOAR: The first thing to say about the Edwards selection is that two of the likely criticisms of it are contradictory. On the one hand, critics will complain that he lacks the attack-dog instinct a vice-presidential nominee needs, pointing to his softball performance in the primaries once the field winnowed to him and Kerry. On the other hand, critics will say Edwards lacks one of the qualities Kerry was ostensibly looking for in a running mate: an absence of political ambition or at least an ability to suppress one's ambition, something Edwards has appeared incapable of at times.

What this analysis overlooks is the fact that ambition was the reason Edwards didn't beat Kerry up late in the primaries—that is, Edwards didn't want to hurt his chances of becoming Kerry's running mate. But ambition cuts both ways. And, now that Edwards has actually become Kerry's running mate, the best way to serve his ambition—which is either to become vice president or to become a leading candidate for the Democratic nomination in 2008—is to land some blows against George W. Bush and Dick Cheney.

I guess you could argue that Edwards might continue pulling his punches during the general election campaign so as not to hurt his chances in 2008. But, while Democratic voters and Democratic power brokers are likely to be forgiving, even welcoming, of a Democratic candidate who doesn't attack other Democrats, they're not likely to be very keen on a Democrat who refuses to attack Republicans.

You could also argue that Edwards would prefer to be a leading candidate for the Democratic nomination in 2008 than to spend eight years languishing in the Naval Observatory, making him less than committed to Kerry this fall. But I'm not even sure this is true. The knock against Edwards in the primaries was that he lacked experience and gravitas, particularly when it came to national security and foreign policy. If the Kerry-Edwards ticket comes up short in November, the same criticism will be true of Edwards in 2008, when his chief opponent is likely to be Hillary Clinton, who will by then have spent several years on the Senate Armed Services Committee and eight years rubbing elbows with foreign leaders and national security officials in the White House. Which is to say, Edwards may need to be vice president in order to make himself into a credible presidential candidate.

SHOOT OUT: This passage from *The New York Times*, about Kerry's pitch to rural voters, gave me an idea:

> On Day 2 of his bus tour through Minnesota, Wisconsin and Iowa, seeking the support of rural and small town America, Mr. Kerry stopped here to do some trapshooting with a 12-gauge shotgun. He ... hit 17 out of 25 targets, which Terry Herbst, a longtime member of the [shooting] club, described as 'really good' for shooting with an unfamiliar gun.

Why not challenge Bush to a target-shooting competition? It sounds like Kerry would probably win. And for Bush to decline would be an even bigger p.r. defeat than being outshot by Kerry.

THE NEW FACE OF CENTRISM: From a July 1 *New York Times* piece about Ralph Nader's endorsement by the Reform Party: " 'We've moved to the center,' [Reform Party national chairman Shawn] O'Hara said, while conceding that he once favored the execution of doctors and nurses who performed abortions but now embraced abortion rights as provided by federal law, as Mr. Nader does."

Campaign Journal

RYAN LIZZA

SECOND CHOICE: The first thing that caught my attention in all the veep coverage is how successful the Bush campaign has been at injecting its anti-Edwards talking points into the media's bloodstream. The cable networks have given lots of coverage to the new Bush ad, "First Choice," which shows John McCain praising the president, an effort to remind voters that McCain rejected Kerry's appeals to join the ticket. But I haven't seen any mention of the fact that, in 2000, Bush asked McCain if he was interested in being his running mate, and Bush was similarly rejected. I had completely forgotten about this bit of history until several people e-mailed me this quote from McCain as he entered the Senate chamber for a routine vote on March 11:

> George Bush asked me in 2000 if I was interested in being vice president. I said no. I wasn't interested then and I'm not interested now.

Sounds like Cheney was Bush's second choice.

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Campaign Journal

Two Into One

BY RYAN LIZZA

JOHN EDWARDS BRINGS a lot to the Democratic ticket—charm, new electoral opportunities in the South and rural Midwest, a working-class background, outsider credentials—but the most significant thing he brings to John Kerry's campaign is a message. In picking Edwards, Kerry tacitly acknowledged one of the most persistent criticisms of his campaign—that it lacked a coherent vision.

Kerry basically admitted this on Tuesday, when he publicly announced his decision. "Throughout this campaign," he told a crowd in Pittsburgh, "John [Edwards] talked about the great divide in America—the 'two Americas' that exist between those who are doing very well and those who are struggling to make ends meet in our country. That concern is at the center of this campaign. It is what it is all about." But, if that is what the Kerry campaign was all about before John Edwards hopped aboard, it was doing a good job of keeping it secret.

During the primaries, Edwards used the "two Americas" formulation as a powerful metaphor to contrast Bush administration policies benefiting the few with his own prescriptions to aid the middle class. In one speech, he borrowed a phrase from Andrew Jackson to describe the theme of his campaign: "Equal opportunity for all; special privileges for none." He coupled this message with his own rags-to-riches biography and, most importantly, with a set of ideas on taxes, health care, college tuition, and other issues that spoke to the economic anxieties of struggling families. None of Edwards's proposals were hugely ambitious or radical, but they addressed kitchen-table concerns and struck a chord with audiences. After Edwards's events, voters spoke glowingly of his message, not just his personality. Meanwhile, at Kerry's events, voters talked tactically—about how, because of his war record, they thought Kerry could beat Bush.

This disparity probably made it inevitable that Kerry would eventually steer toward a more Edwardsian view of the world. And, in fact, in the weeks before Kerry chose Edwards, several much-ignored policy speeches were perhaps a harbinger of the Edwards pick. Events in Iraq and coverage of the running-mate selection process overshadowed an important shift in Kerry's domestic message toward the same themes that attracted so many Democrats to Edwards earlier this year.

The shift occurred in response to the improving economy. Until recently, Kerry's main criticism of the Bush administration was a simple, and initially potent, attack on the president for the number of jobs lost during his term. But, as spring turned into summer, it became clear there was a problem with this line of argument: The economic recovery was generating hundreds of thousands of new jobs. Absent a larger critique, Kerry's main economic message was held hostage to the monthly data from the Bureau of Labor Statistics. The campaign needed something more. "You had the jobs picture improving, and that created an imperative to have a broader story line," says a senior Kerry adviser.

THE SOLUTION WAS the "Middle-Class Squeeze." Unveiled in late June, it's what the Kerry campaign calls its new economic message. The campaign argues that stagnant incomes for those who do have jobs, combined with the rising cost of health care, education, gasoline, and child care, are forcing Americans to assume ever greater debt loads and causing a record number of middle-class families to declare bankruptcy. Unlike the specific number of jobs lost, the trends Kerry is talking about now aren't fleeting, but structural. Politically, sounding these themes also makes sense for two reasons. One is that Bush, apparently convinced that the election will be decided on national security, doesn't have much of a second-term domestic agenda. Secondly, Kerry's aides think the balance between these policies and electoral politics is well calibrated. "We're speaking to the broad middle class that we need to get to, electorally, but also doing good policy that helps the people that need help," says a senior aide.

Many of the themes that Kerry outlined last month echo Edwards's primary campaign. It's no coincidence that Robert Gordon, John Edwards's chief policy adviser during the primaries, joined the Kerry campaign in the spring. Along with Bruce Reed, president of the Democratic Leadership Council and Bill Clinton's domestic policy adviser, Gordon was one of the architects of Edwards's policy portfolio. Gordon and several other Kerry advisers were deeply influenced by Elizabeth Warren and Amelia Warren Tyagi's book, *The Two-Income Trap*, a powerful study of the financial strains burdening middle-class families with two working parents. "[Their] book had a real galvanizing effect," says an adviser. "A lot of us read it. It did a good job crystallizing a lot of our economic prescriptions."

As Edwards did in the primaries, Kerry now talks about the explosion of household bankruptcies over the last few years (they have jumped 33 percent, from 1.2 million in 2000 to 1.6 million in 2003). Kerry has also added to his economic platform the problem of crushing debt from credit cards, an issue also championed by Edwards and a problem that will only worsen as interest rates rise. Soon Kerry will unveil proposals to deal with another Edwardsian concern, predatory lending. Some of Kerry's earlier proposals, such as his plans to reduce college-tuition costs and to contain health care costs, have also been recast into this new rubric of easing the middle-class squeeze.

So far, Kerry has had trouble sticking to this new message. On the stump, it has sometimes sounded like a laundry list of proposals rather than what, in Edwards's hands,

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was a powerful critique of, and a sensible response to, Bush's policies. But, the more Kerry emphasized the middle-class economic anxieties from the Edwards primary campaign, the more it made sense simply to bring Edwards on board. The promise of the Edwards pick is that Kerry is embracing not just many of the North Carolina senator's policies, but his framework for selling them, too. Kerry's use of the "two Americas" formulation in his speech Tuesday was evidence of this, as was the Kerry campaign's concerted effort the following day to define the ticket as one of "hope and optimism," another hallmark of John Edwards's primary campaign.

THE ONE MAJOR policy difference between Kerry and Edwards during the primaries was over free trade. Edwards attacked Kerry's vote for NAFTA, but, notably, he never called for its repeal and his criticism always smacked more of opportunism than of conviction. He didn't raise the issue strenuously until after Richard Gephardt was gone from the race, when he saw an opening with organized labor and working-class voters on Kerry's left. These attacks on free trade were an awkward fit with the rest of Edwards's middle-class, New Democrat agenda, and they will clearly not be a major feature of the Kerry-Edwards rhetoric.

The major downside to adopting not just Edwards's message but Edwards himself is that it has reopened a question that Kerry had already successfully answered for voters—one of experience. Among Kerry's greatest advantages was the fact that poll after poll shows that large majorities of Americans believe he is ready to be president. Historically, that is an enormous obstacle for a challenger to overcome, one that dogged Bill Clinton in 1992 and George W. Bush in 2000, right up until Election Day. For a Democrat in post–September 11 America, it is an especially important accomplishment that voters have no reservations about Kerry's experience. Meanwhile, Republicans have quickly criticized Edwards, claiming his career as a lawyer and his one term in the Senate do not qualify him to take over the presidency in an emergency. Then again, all evidence is that, in the end, voters make a decision about the top of the ticket, not the bottom. If reopening the experience question was the cost Kerry had to pay to sharpen his campaign's lackluster domestic message—and to get his party's best spokesman to sell it—then it will have been well worth it. ■

The Democrats can take Dixie.

Due South

BY JOHN B. JUDIS

IN A SPEECH in Hanover, New Hampshire, on January 24, John Kerry chided Democrats for "looking South," for thinking states on the other side of the Mason-Dixon line could bring them the presidency. But fortunately, in choosing North Carolina Senator John Edwards as his running mate, Kerry has done exactly that. More important than the political skill Edwards brings to the ticket is the opportunity he offers to keep the Democratic flame lit in Dixie—a strategic necessity if Democrats ever want to become the majority party again.

In 1960, the eleven Southern states represented 22 percent of the votes in the electoral college; in 2004, they will account for 28 percent. If George W. Bush wins all of these states in November, as he did in 2000, he'll have 153 electoral votes. Add to that 62 electoral votes primarily from Prairie and Rocky Mountain states that Bob Dole and he won 1996 and 2000, and Bush will be only 55 votes shy of a majority—votes that could come from either Ohio or Pennsylvania, plus Missouri, West Virginia, Arizona, Kentucky, and Nevada (all states Bush won in 2000). The Democrats cannot afford to spot the GOP this kind of lead in presidential elections.

The same dynamic governs control of the Senate. If Democrats cede the region's 22 seats, the Republicans are almost halfway to a majority—much closer if one adds almost certain victories in states like Utah and Kansas. This year, the situation is particularly acute: 19 Democratic Senate seats are being contested as compared with only 15 Republican seats. Five of the 19 are in Southern states where Democrats are retiring. The Democrats could conceivably lose all of these, making it virtually impossible for them to recapture the Senate not only this year, but in 2006 as well, when more Democratic than Republican seats will again be up for grabs.

Edwards won't necessarily bring Kerry any Southern states, and he won't guarantee the victory of Democratic Senate candidates. But his candidacy could stop the erosion of Democratic support in the South. He'll force Bush to spend resources there, and he'll allow the party's Senate candidates to run openly as Democrats rather than hiding their party registration. Most important, Edwards will point the way to a viable Southern Democratic party—one that is broadly progressive and based in the region's fastest-growing high-tech areas.

THE SOUTH WAS, of course, solidly Democratic until the 1960s, when the party split over the civil rights movement and the enfranchisement of Southern blacks. By the 1980s, many Southern, white, working-class voters, particularly in "black belt" states like Alabama and Mississippi, spurned the national Democrats as the party of affirmative action, welfare, and secular humanism. Together with Southern business leaders, they formed the new base of the Republican Party. Initially, they continued to back conservative Democratic senators and

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representatives even as they voted for Republican presidential candidates. But, by the '90s, as conservative Democrats like Mississippi Representative Jamie Whitten finally retired, these voters chose to support their conservative Republican counterparts.

The dominant political philosophy of the South did not change from 1960 to 1990, although the dominant party did. But, even as the Republicans were consolidating their hold, subterranean social and economic changes were subtly altering Southern political attitudes and laying the base for a Democratic challenge to Republican dominance. In states like North Carolina, Florida, and Virginia, college-educated white professionals and low-wage Latino service workers flocked into metropolitan areas like Virginia's northern suburbs, Florida's Orange County, and North Carolina's Research Triangle, where the primary products are services and ideas rather than industrial goods. These fast-growing, post-industrial metropolitan areas, which Ruy Teixeira and I have called "ideopolises," have nourished a cosmopolitan, secular culture and socially liberal, fiscally moderate politics. Their residents' outlook is closer to that of Denver, Colorado, or Portland, Oregon, than to that of the South's factory towns or rural areas.

One of the best examples is Edwards's North Carolina, whose rapid population growth, due largely to migrants from out of state, has been heavily concentrated in the Research Triangle (comprising Durham, Chapel Hill, and Raleigh) and in Charlotte's Mecklenberg County. According to surveys published in *NC DataNet*, 85 percent of the new migrants in the '90s were white, 57 percent had college degrees, 27 percent had postgraduate degrees, and 80 percent were employed in upscale, white-collar professions. They identify themselves as more liberal and less religious than the average North Carolina voter. Many of them register as independents—a group that now constitutes 18 percent of the state's voters and that, according to an Elon University survey, is much closer to the national Democratic Party than to the Republican Party on social and economic issues. Fifty-seven percent of independents support civil unions among gays as compared with 36 percent of the state's Republicans and 48 percent of its Democrats. By wide margins, they think Democrats would be better than Republicans at "creating jobs" and "making health care more affordable."

In the '80s, aspiring Southern Democratic politicians had to cobble together majorities by combining the black vote with the little that remained of white, working-class loyalty to Democrats. But the emergence of these new, post-industrial areas has provided Democrats a new potential base of support. At the same time, the national party's turn toward the center under Bill Clinton made it possible for Southern Democrats to court white, working-class voters without dissociating themselves from the national party.

Edwards is one of the best examples of this new Southern Democratic strategy. In his 1998 victory over Republican incumbent Senator Lauch Faircloth, Edwards ran as a Clinton New Democrat. He advocated a patients' bill of rights and attacked the privatization of social security. He was able to hold his own among the state's white, working-class voters in the rural east, win the bulk of the state's black voters, and amass large margins in the Research Triangle, Mecklenberg County, and among the state's new professionals. According to exit polls, Edwards beat Faircloth among voters with postgraduate degrees by 57 to 41 percent.

Other recent practitioners of this strategy are Florida Senator Bill Nelson and Virginia Governor Mark Warner. Running (like Edwards) as a centrist national Democrat and not as a Southern conservative, Nelson won a surprisingly easy Senate victory over Representative Bill McCollum in 2000. He won Orange County (with its concentration of white-collar professionals and Latino service workers) and held his own in less affluent white areas in the Florida panhandle. McCollum, by contrast, won in smaller, rural counties that had abandoned the Democratic Party in response to the civil rights movement and were now solidly Republican. McCollum, in other words, won the dying old South; but Nelson won the new South.

In November 2001, Warner won Virginia's gubernatorial election by following a similar script. He took Virginia's northern suburbs, which house government workers and a host of high-tech companies, including AOL, as well as an influx of Latino immigrants. He won predominately white, upscale Fairfax County, the state's largest, 54 to 45 percent. But Warner, like Edwards, also showed an ability to attract the white, working-class voters who began to become Republicans in the '60s, handily winning rural counties that Bush carried in 2000.

As you would expect, the strategy employed by Edwards, Nelson, and Warner would work best now in Virginia, North Carolina, and Florida—post-industrial metropolitan areas in those states account for almost half the state vote. It could also eventually work in Tennessee, Texas, and Georgia. Kerry and Edwards will still suffer a big disadvantage this fall—many white Southerners outside of Raleigh-Durham or Palm Beach County will see Kerry as an alien New England liberal. But they need to win only a few Southern states, like Clinton did, and right now, Kerry and Edwards are running even with Bush and Cheney in Florida and North Carolina.

Edwards could help Senate candidates as well, which is why they, and a slew of Democratic senators, had been pushing Kerry to pick him for the veep slot. "Edwards is from the South and speaks Southern, and I think would be helpful to the candidates in that regard," said Senator John Breaux of Louisiana. Edwards's candidacy will most clearly benefit Erskine Bowles, who is running for the seat that Edwards is vacating, but it could also help Democratic candidates in Florida and Louisiana. Edwards alone won't turn these races around, but, just as with the presidential contest, he will help keep Democrats' prospects alive in the South. And, for a vice-presidential candidate in a region the Democrats cannot afford to ignore, that is no small accomplishment. ■

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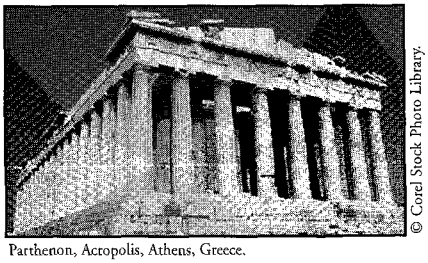

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The phony assault on Edwards.

Trial and Error

BY JONATHAN COHN

AT FIRST GLANCE, the White House archives suggest nothing unusual about President Bush's activity on January 16, 2003. Appearing before a university audience in Scranton, Pennsylvania, Bush touted his proposal for curbing medical malpractice lawsuits by limiting jury awards. It was a familiar conservative cause he had championed many times before, and he hit the usual notes in his speech: that "there are too many lawsuits filed against doctors and hospitals without merit" and that the malpractice system is "one of the main reasons" for rising health care costs. But, inside the White House, the day had a very special purpose. Even though John Edwards was, at the time, just one of several Democratic presidential hopefuls, Bush was staging a preemptive strike against him. One Bush adviser actually told the Associated Press that January 16 was "Whack John Edwards Day."

Now that John Kerry has picked Edwards as his running mate, every day is going to be Whack John Edwards Day. And you can bet medical malpractice will be a big part of the assault. Partly, this is because Edwards is a trial lawyer who first rose to fame—not to mention fortune—by taking on malpractice cases. And partly, this is because malpractice reform holds out the promise of reducing the traditional Democratic political advantage on health care, an issue that Kerry has pledged to emphasize this fall and one that weighs heavily on the minds of voters.

Bush has a point when he talks about the current medical malpractice system. It is severely flawed, and the political resistance of trial lawyers is a real impediment to fixing it. But Bush is wrong to blame the malpractice system for the entirety of America's spiraling health care costs—it's only a tiny aspect of a much more complex problem. What's worse, when Bush starts talking about solutions, he advocates policies that help primarily a narrow class of Republican financiers, even as he pretends to fix an urgent problem that afflicts most of the country.

IT'S OFTEN SAID that a good medical malpractice system should have two goals: deterring doctors from committing malpractice and compensating its victims. And, as Paul Ginsburg, president of the Center for Studying Health System Change, puts it, "Our current system has failed badly in both of those tasks."

One reason the current system fails to deter malpractice is that it discourages physicians from talking about mistakes. Today, a doctor who acknowledges an error exposes himself to a lawsuit; yet it is through precisely those introspective conversations that physicians, along with hospitals and managed care companies, can best identify and fix systematic problems in patient care. More subtly, the current system fails to prevent bad medicine because it doesn't impose more severe financial penalties on those who commit the worst infractions. A 2002 analysis by Public Citizen showed that just 5 percent of all physicians are responsible for nearly half the money paid out in malpractice awards every year. But—unlike a car insurance company, which demands higher premiums from drivers with poor records—the companies that insure doctors against malpractice awards traditionally haven't charged these troublesome physicians more. Instead, they typically charge all local physicians of the same specialty the same rate.

All of which might not be so awful if the current system at least served patients well. But it doesn't. Yes, those patients who find the right lawyers can receive money to compensate them for their lost incomes and suffering—sometimes quite a lot of money, which is why critics of the system frequently call it a lottery. But those who don't make it to court end up with very little, and they may actually comprise the majority of malpractice victims. A frequently cited study from the reputable *New England Journal of Medicine* analyzed data from New York state in 1984 and found that just 1.5 percent of likely malpractice victims ever sued.

What's more, outsized jury awards don't fully explain ballooning malpractice insurance premiums. Insurance carriers hike rates whenever their investment portfolios decline, and the General Accounting Office estimates that this explains half of the recent rise in malpractice premiums. Meanwhile, the liability insurance industry itself admits that, of all the money physicians and hospitals pay as premiums, less than half is used to cover payments to the victims of malpractice. The rest goes to overhead, in the form of defense costs and insurance company administration, and to profit.

It's not hard to envision a better medical malpractice system—one that still allowed for large jury awards in cases of true negligence, but that handled the majority of bad medical outcomes through a no-fault system requiring more disclosure and analysis of medical errors. Ideally, such a system would also include more aggressive disciplinary action against habitually negligent physicians, either by licensing boards or a government body. And most of the money coursing through the system would end up where it belongs: not in the pockets of trial lawyers, but of those who suffer physical harm. But that's not something you're going to hear from the trial lawyers—and, as a result, it's not something you're going to hear from most Democrats, at least until somebody else starts the conversation.

UNFORTUNATELY, THE REPUBLICANS have their own favored political financiers, many of whom represent corporate interests. And, like the trial lawyers, they seem less interested in improving medical care than in advancing their own agenda—in this

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case, limiting their financial exposure and reducing lawsuits generally. So, while Republicans actually do talk about the problems with the current malpractice system, they tend to limit their proposed reforms to blunt measures that would simply restrict the amount of money even the legitimately aggrieved can claim, while failing to propose alternative methods for improving the quality of medicine or for punishing negligent physicians. Sure enough, this is the approach Bush advocated back in January 2003 and continues to tout today.

Where Bush and the Republicans really veer into questionable territory, though, is in their argument that malpractice suits account for the rapid increases in health insurance premiums for average Americans—increases that have priced many out of insurance altogether. They base this argument largely on the theory that the threat of malpractice lawsuits forces doctors to practice "defensive medicine"—ordering unnecessary tests and procedures that drive up the cost of health insurance. The White House claims defensive medicine increases overall health spending by 5 to 9 percent every year. Or, to put it another way, eliminating defensive medicine would reduce the nation's total health bill by $60 billion.

Although still a small fraction of overall health care spending, if spent properly, $60 billion could buy health insurance coverage for 20 million people (about half of the current uninsured population). And it's not as if the administration pulled this number out of thin air. It's based on a pair of papers co-authored by Mark McClellan, a fully credentialed economist and physician who, despite having served for years in the Bush administration, has maintained his reputation for academic integrity. The two papers compared the spending on patients with certain severe heart conditions in states that have caps on the amount juries can award in malpractice cases with states that don't. The difference, they found, was that magical 5 to 9 percent.

But the McClellan papers focused on just one type of health problem for one narrow slice of the population. When the nonpartisan Congressional Budget Office (CBO) tried to replicate the findings for other health problems and other groups, it couldn't. Specifically, it "found no evidence that restrictions on tort liability reduce medical spending." And, when it compared per capita health spending in states with liability restrictions to states without the restrictions, it again "found no statistically significant difference." So, while the CBO didn't discount the existence of defensive medicine, it was highly skeptical of the administration's claim that malpractice cases are a major source of higher health insurance premiums. And most experts argue that a variety of other factors—including new technology and patient demands for expensive diagnostic tests—matter far more.

If the administration was serious about addressing rising health insurance premiums and the large numbers of uninsured Americans—the problems most on voters' minds this election year—it would take a different approach. It might, for instance, work toward a universal coverage system, perhaps by strengthening existing programs for the poor while opening up the federal employees plan to individuals who can't buy coverage on their own. That is, in fact, the approach Kerry and Edwards advocate. It's far more ambitious than anything the Bush administration has proposed—and likely more effective, too. No wonder Bush would rather talk about something else. ■

Pakistan for Bush.

July Surprise?

BY SPENCER ACKERMAN, MASSOUD ANSARI, AND JOHN B. JUDIS

LATE LAST MONTH, President Bush lost his greatest advantage in his bid for reelection. A poll conducted by ABC News and *The Washington Post* discovered that challenger John Kerry was running even with the president on the critical question of whom voters trust to handle the war on terrorism. Largely as a result of the deteriorating occupation of Iraq, Bush lost what was, in April, a seemingly prohibitive 21-point advantage on his signature issue. But, even as the president's poll numbers were sliding, his administration was implementing a plan to insure the public's confidence in his hunt for Al Qaeda.

This spring, the administration significantly increased its pressure on Pakistan to kill or capture Osama bin Laden, his deputy, Ayman Al Zawahiri, or the Taliban's Mullah Mohammed Omar, all of whom are believed to be hiding in the lawless tribal areas of Pakistan. A succession of high-level American officials—from outgoing CIA Director George Tenet to Secretary of State Colin Powell to Assistant Secretary of State Christina Rocca to State Department counterterrorism chief Cofer Black to a top CIA South Asia official—have visited Pakistan in recent months to urge General Pervez Musharraf's government to do more in the war on terrorism. In April, Zalmay Khalilzad, the American ambassador to Afghanistan, publicly chided the Pakistanis for providing a "sanctuary" for Al Qaeda and Taliban forces crossing the Afghan border. "The problem has not been solved and needs to be solved, the sooner the better," he said.

This public pressure would be appropriate, even laudable, had it not been accompanied by an unseemly private insistence that the Pakistanis deliver these high-value targets (HVTs) *before* Americans go to the polls in November. The Bush administration denies it has geared the war on terrorism to the electoral calendar. "Our attitude and actions have been the same since September 11 in terms of

Massoud Ansari, a frequent TNR *contributor, reported from Karachi.*

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getting high-value targets off the street, and that doesn't change because of an election," says National Security Council spokesman Sean McCormack. But THE NEW REPUBLIC has learned that Pakistani security officials have been told they must produce HVTs by the election. According to one source in Pakistan's powerful Inter-Services Intelligence (ISI), "The Pakistani government is really desperate and wants to flush out bin Laden and his associates after the latest pressures from the U.S. administration to deliver before the [upcoming] U.S. elections." Introducing target dates for Al Qaeda captures is a new twist in U.S.-Pakistani counterterrorism relations—according to a recently departed intelligence official, "no timetable[s]" were discussed in 2002 or 2003—but the November election is apparently bringing a new deadline pressure to the hunt. Another official, this one from the Pakistani Interior Ministry, which is responsible for internal security, explains, "The Musharraf government has a history of rescuing the Bush administration. They now want Musharraf to bail them out when they are facing hard times in the coming elections." (These sources insisted on remaining anonymous. Under Pakistan's Official Secrets Act, an official leaking information to the press can be imprisoned for up to ten years.)

A third source, an official who works under ISI's director, Lieutenant General Ehsan ul-Haq, informed TNR that the Pakistanis "have been told at every level that apprehension or killing of HVTs before [the] election is [an] absolute must." What's more, this source claims that Bush administration officials have told their Pakistani counterparts they have a date in mind for announcing this achievement: "The last ten days of July deadline has been given repeatedly by visitors to Islamabad and during [ul-Haq's] meetings in Washington." Says McCormack: "I'm aware of no such comment." But according to this ISI official, a White House aide told ul-Haq last spring that "it would be best if the arrest or killing of [any] HVT were announced on twenty-six, twenty-seven, or twenty-eight July"—the first three days of the Democratic National Convention in Boston.

THE BUSH ADMINISTRATION has matched this public and private pressure with enticements and implicit threats. During his March visit to Islamabad, Powell designated Pakistan a major non-NATO ally, a status that allows its military to purchase a wider array of U.S. weaponry. Powell pointedly refused to criticize Musharraf for pardoning nuclear physicist A.Q. Khan—who, the previous month, had admitted exporting nuclear secrets to Iran, North Korea, and Libya—declaring Khan's transgressions an "internal" Pakistani issue. In addition, the administration is pushing a five-year, $3 billion aid package for Pakistan through Congress over Democratic concerns about the country's proliferation of nuclear technology and lack of democratic reform.

But Powell conspicuously did not commit the United States to selling F-16s to Pakistan, which it desperately wants in order to tilt the regional balance of power against India. And the Pakistanis fear that, if they don't produce an HVT, they won't get the planes. Equally, they fear that, if they don't deliver, either Bush or a prospective Kerry administration would turn its attention to the apparent role of Pakistan's security establishment in facilitating Khan's illicit proliferation network. One Pakistani general recently in Washington confided in a journalist, "If we don't find these guys by the election, they are going to stick this whole nuclear mess up our asshole."

Pakistani perceptions of U.S. politics reinforce these worries. "In Pakistan, there has been a folk belief that, whenever there's a Republican administration in office, relations with Pakistan have been very good," says Khalid Hasan, a U.S. correspondent for the Lahore-based *Daily Times*. By contrast, there's also a "folk belief that the Democrats are always pro-India." Recent history has validated those beliefs. The Clinton administration inherited close ties to Pakistan, forged a decade earlier in collaboration against the Soviet invasion of Afghanistan. But, by the time Clinton left office, the United States had tilted toward India, and Pakistan was under U.S. sanctions for its nuclear activities. All this has given Musharraf reason not just to respond to pressure from Bush, but to feel invested in him—and to worry that Kerry, who called the Khan affair a "disaster," and who has proposed tough new curbs on nuclear proliferation, would adopt an icier line.

Bush's strategy could work. In large part because of the increased U.S. pressure, Musharraf has, over the last several months, significantly increased military activity in the tribal areas—regions that enjoy considerable autonomy from Islamabad and where, until Musharraf sided with the United States in the war on terrorism, Pakistani soldiers had never set foot in the nation's 50-year history. Thousands of Pakistani troops fought a pitched battle in late March against tribesmen and their Al Qaeda affiliates in South Waziristan in hopes of capturing Zawahiri. The fighting escalated significantly in June. Attacks on army camps in the tribal areas brought fierce retaliation, leaving over 100 tribal and foreign militants and Pakistani soldiers dead in three days. Last month, Pakistan killed a powerful Waziristan warlord and Qaeda ally, Nek Mohammed, in a dramatic rocket attack that villagers said bore American fingerprints. (They claim a U.S. spy plane had been circling overhead.) Through these efforts, the Pakistanis could bring in bin Laden, Mullah Omar, or Zawahiri—a significant victory in the war on terrorism that would bolster Bush's reputation among voters.

But there is a reason many Pakistanis and some American officials had previously been reluctant to carry the war on terrorism into the tribal areas. A Pakistani offensive in that region, aided by American high-tech weaponry and perhaps Special Forces, could unite tribal chieftains against the central government and precipitate a border war without actually capturing any of the HVTs. Military action in the tribal areas "has a domestic fallout, both religious and ethnic," Pakistani Foreign Minister Mian Khursheed Mehmood Kasuri complained to the *Los Angeles Times* last

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year. Some American intelligence officials agree. "Pakistan just can't risk a civil war in that area of their country. They can't afford a western border that is unstable," says a senior intelligence official, who anonymously authored the recent *Imperial Hubris: Why the West is Losing the War on Terror* and who says he has not heard that the current pressures on Pakistan are geared to the election. "We may be at the point where [Musharraf] has done almost as much as he can."

Pushing Musharraf to go after Al Qaeda in the tribal areas may be a good idea despite the risks. But, if that is the case, it was a good idea in 2002 and 2003. Why the switch now? Top Pakistanis think they know: This year, the president's reelection is at stake. ■

Pochalla Dispatch

Again and Again

BY DOUG MCGILL

A GROUP OF women huddle together, talking quietly. In their hands they hold small yellow berries called *olemo* that are the shape and color of the 25-cent gumballs sold in machines at the mall. Occasionally, one of them takes a small bite from a berry and makes a pucker face. The women are debating whether to feed the berries, one of the few sources of food and moisture available in the drought-stricken refugee camp, to their starving children. The berry is believed to cause diarrhea, so the choice they debate is a sickening one—risk their children's health in hopes of gaining a little nutrition or risk their death from starvation.

The recently formed Pochalla refugee camp is in Sudan, but it is not in Darfur, in the country's west, where humanitarian officials say the worst genocide since Rwanda is presently underway. Rather, Pochalla, in southeastern Sudan, is filled with refugees of the Anuak tribe of Ethiopia, who claim to have fled attacks on their villages led by the Ethiopian army. According to the United Nations, some 8,500 Anuak refugees descended upon this traditional Anuak village, just across the border from Ethiopia, in the early months of this year, more than doubling its population and straining its resources beyond the breaking point. A nearby riverbed has run dry, people are drinking from road ruts and eating leaves, and they whisper in the muted register of oppressive hunger.

Amnesty International, Human Rights Watch, and the State Department have all made it clear in their recent annual reports that Ethiopia's human rights record is poor. Ethiopian forces have rounded up student protestors belonging to separatist groups, journalists have been jailed, and political dissidents have been detained for long periods. The State Department last year estimated that up to 1,500 unlawful killings were committed in Ethiopia in 2002, some by government security forces.

But somehow, news about Ethiopia's seemingly interminable famine, and the good-faith attempts of many Western aid groups to address it, always trumps Ethiopia's human rights infractions in the headlines. In addition, the Ethiopian government, which receives roughly $300 million in annual foreign aid, has drawn much positive attention for its "modernization" and "democratization" efforts. The economic development policies of Prime Minister Meles Zenawi have been held up as exemplary by economists and development experts in the West, including Jeffrey Sachs, the director of the Earth Institute at Columbia University (who has advocated increasing aid to Ethiopia under the United Nations Millennium Project, which he heads), and the Nobel Prize–winning economist Joseph Stiglitz, also at Columbia. In 2001, Stiglitz wrote an article for *The Atlantic Monthly* in which he lauded Meles for his integrity. He was "quick to investigate any accusations of corruption in his government." And he was "committed to decentralization—to ensuring that the center did not lose touch with the various regions," Stiglitz wrote.

Now, the Anuak refugees are telling a different story about the Meles government—a tale of human rights abuse more ominous than any previously reported. The persecution of the Anuak reveals the dark side of Ethiopia's vaunted federalism, and their fate will say much about the future of this fractious African nation. While not on the scale of the Darfur tragedy (which has killed 30,000 and displaced 1.2 million) or the Ethiopian famine (7.2 million Ethiopians are in danger of starvation according to the United Nations), the violence described by the Anuak refugees compels attention precisely because of the tribe's small size. There are just 100,000 Anuak. Almost 10,000 of them are now refugees in Sudan and Kenya. Anuak leaders and several human rights groups—Genocide Watch, Survivors International, and the World Organization Against Torture—say more than 1,200 Anuak have been killed in an explicit campaign by the Meles regime, or a rogue element within it, to wipe out the tribe altogether. They aren't slow to use the word genocide.

EVIDENCE OF A campaign of slaughter and rape by Ethiopian troops comes from several sources. There are eyewitness accounts of Anuak mass graves and the testimony of a former governor of the Anuak region, who says an Ethiopian army commander told him on December 13 about plans to eliminate the Anuak. But mostly, there are the Anuak refugees, all of whom recount the same basic story: Several hundred Ethiopian soldiers came to the town of Gambella, the capital of Gambella state in remote western Ethiopia, on the morning of December 13. There they incited the members of several local tribes that have long-standing tensions with the Anuak,

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collectively known as highlanders, to assault the Anuak with machetes and spears. The soldiers, according to the refugees, went door to door calling Anuak men into the street, where they were shot to death by the soldiers or hacked down by highlanders. They then torched the Anuak's mud-and-straw huts, which are called *tukuls*. Survivors have compiled a list of 424 killed in the attack, noting the manner of their death, either by "bullet" or "machete," gleaned by examining the corpses.

Through April, the refugees say, Ethiopian troops carried out scorched-earth raids on a dozen Anuak villages, where *tukuls* were burned along with seed stock, farmers and herders were shot, and women were raped and taken as sex slaves. It's difficult to verify these accounts, coming as they do from isolated villages without telephones, electricity, or running water. The fact that roughly two-thirds of the Pochalla refugees are not from Gambella, but rather from small villages in the state, however, suggests that something bad—bad enough to make people walk days through the bush to reach this camp—did happen.

Those lucky enough to get here face a precarious existence. The Pochalla refugee camp is rust-red and table-flat, a dusty desertscape strewn with lean-to shelters and shattered human beings. There are no old people here—they either died on the weeklong trek through the bush or remained in Ethiopia to face an uncertain fate. Young children, caked in grime and dressed in rags—if they are dressed at all—scamper around, pulling little bent-metal toys on strings and making tiny forts from straw. But their voices, like those of their parents, are mere whispers, and they cough. A medical worker at the camp estimates that 60 percent of the refugees suffer from diarrhea or low-grade infections, with the threat of malaria, yellow fever, and other ever-present illnesses. By late April, a dozen people had died at the camp from disease or hunger, the refugees say. The World Food Program, from a base camp across the border in Kenya, airdrops lentils, salt, and oil into Pochalla once every six weeks, but the food disappears quickly.

So far, the Meles government has denied there is any organized campaign against the Anuak. Meles told Reuters on April 29 that reports by Western NGOs that 1,137 people had been killed between December 13 and March 31 in the Gambella region were "a fiction." Barnabas Gebre-Ab, the Ethiopian minister for federal affairs for Gambella and the civilian chief of the armed forces in the state, tells me that some "tragic" deaths had occurred in Gambella on December 13 and that a mob of "social scums"—highlanders who supposedly had whipped themselves into a fury of ancient race hate against Anuak—was responsible. The only role the Ethiopian army played was to stop the killing before it spread, he says.

Why Ethiopia would try to eliminate a small tribe of mostly illiterate herders and farmers remains something of a mystery. In recent years, tensions between the Anuak and the central government have reached a boiling point over several issues, including rights to oil discovered in Gambella, Anuak representation in the Gambella state government, and, especially, the placement in Gambella of Sudanese refugees of the Nuer tribe, who, for centuries, have competed with the Anuak for land, grazing, and fishing rights. Since December, an armed Anuak resistance group called the Gambella People's Liberation Force has formed. On January 24, according to both the Ethiopian government and Genocide Watch, armed Anuak in the town of Dimma killed more than 150 Ethiopian soldiers in an ambush.

But perhaps the real reason the Anuak have been singled out is that the Meles government has decided to use them as a way to send a warning to other, more powerful separatist forces in Ethiopia. Formed by idealistic Marxist revolutionaries, including Meles himself, the government came to power after a grueling 17-year war waged against one of the cruelest regimes in African history. In the early years, a ruling coalition of the country's many ethnic groups was formed, a democratic constitution was written, and a grand strategy of "ethnic federalism" was announced. The dream was peaceful co-existence, but today, virtually all of the human rights abuses tallied each year stem from the Meles regime's suppression of one or another separatist movement. There is a liberation front for almost every one of the "ethnic federalist" states in the country—the Oromo Liberation Front, the Eritrean People's Liberation Front (still battling Ethiopia over disputed boundaries), the Ogaden National Liberation Front, the Sidama Liberation Front, and, now, the Gambella People's Liberation Front begun by the Anuak.

A 36-page article written under the pen name "Mathza," a pseudonym widely believed in Ethiopia to be used by Meles, and posted on the Web on April 6, seethes with rage against the "power mania" of "separatists, parties, organizations, groups, private press and individuals" who "condemned the government for not handing over the administration to them on a silver platter." "Fantasizing to dismantle the ethnic-based federal system is tantamount to conspiring to create chaos," Mathza writes. Most ominously, Mathza reminds his readers that "the bogus statements that Ethiopians were always united, that they enjoyed harmonious co-existence, that they were happy under the previous governments, etc., are all lies. . . . The truth is the country was held together by force, not voluntarily, a situation that was likely to explode any time with dire consequence." The author says Switzerland and the United Kingdom are models for Ethiopia's ethnic state system, but the real model evoked is Yugoslavia, with Meles himself in the role of Tito, holding the country together with an iron fist. Mathza cites the recent violence in Gambella as the kind of local incident "instigat[ed] and fuel[ed]" by separatists who then "cry foul and human rights violations" when the Ethiopian army intervenes. All of which offers a clue as to why the Anuak, so tiny a tribe, would be so worrying to the regime. Mathza paints Ethiopia as fragile, filled with explosive tension points, a tower of matchsticks. In such a country, even a little *olemo* berry could trigger a dangerous chain reaction. ■

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Paris Dispatch

Tour de Farce

BY PASCAL BRUCKNER

On the night of July 1, the city of Paris sponsored a preview of *Fahrenheit 9/11*. In the baroque Grand Rex theater, in front of almost 3,000 people, Mayor Bertrand Delanoe explained why it was crucial to see Moore's new film, why the film's message matters to anyone who cares about freedom, and why France was right to award the movie the Palme d'Or at the Cannes Film Festival in May. Harvey Weinstein, one of the film's producers, took the stage to recount the difficulties he had encountered in distributing the documentary, joked that he might soon find himself unemployed, and said he would be waiting in the lobby if anyone wanted to offer him a job. He then read, in English, a letter from Moore apologizing for being unable to attend the preview and once again thanking France for the terrific welcome at Cannes, where *Fahrenheit 9/11* was greeted with a 20-minute standing ovation (and where Moore himself was applauded for another 12 minutes when he accepted the award).

Whatever one thinks of him, Moore is at ease in his enormous talent, his directing dexterity, and his ability to blend contrasts and irony to turn his adversaries into grotesque figures caught red-handed in lies and stupidity. True or false, his arguments are clever, deft, and deadly. And Moore has a genius for comedy—a talent sorely lacking on the left. But his appeal in France runs deeper than this. Moore, a debonair Falstaff, embodies that figure so dear to us Gauls: the rebel. A paunchy guy from Flint, minstrel of a long-vanished America, homesick for his disappearing working-class town, he plays the quintessential American who, baseball cap screwed firmly on his head, can single-handedly slay the mighty financiers of capitalism and imperialism and, above all, today's Great Satan, George W. Bush. Rumors, cleverly stoked by Weinstein and his brother, another producer, which hinted that the film might not be distributed in the States at all (a warning that censorship was on the loose in America), only heightened my countrymen's enthusiasm.

Through Moore, France has rediscovered its eternal vocation: to be a haven for persecuted artists. As the French media reminds us, France, over the course of history, has displayed excellent judgment—being the first to acknowledge the genius of Faulkner, sheltering black jazz musicians from the segregation of prewar America, and celebrating any number of novelists, poets, and musicians otherwise ignored in their own countries. And so, for a few weeks, Moore became our very own dissident, somewhere between Vaclav Havel and Andrei Sakharov, freed from the clutches of a totalitarian administration, protected by the good people of the French hexagon, and honored by the Palmes in Cannes. The "motherland of the Rights of Man" celebrated through Moore a compassionate America. That is to say, a humble America—working-class, proletarian, and, above all, isolationist, at ease within its own borders and averse to meddling in the affairs of the rest of the world (a dream come true for the hyper-realist Quai d'Orsay). Through Moore, the French could grab a piece of the good America and use it to exorcise the bad—the predators of Wall Street and Washington, the rich, the super-rich, and their lackeys.

By enabling the French to love and hate the States at the same time, Moore has laid bare the intensity of the ties that still bind us to our transatlantic neighbor. Today's France looks exclusively to the West: the only nation it wholeheartedly loathes; the only one it criticizes, dissects, challenges; the only nation to which it compares itself and would like to surpass is the Republic of the New World. The anti-Americanism of some of our political and intellectual elites is merely the flipside of their infatuation. The most humble production by a New York filmmaker or the scribbles of a Montana author are received in our country—especially by the left—with outbursts of approval that similar movies and books from Brest, Florence, or Riga would never garner. But, to liberate us from such shameful passion, our worship of America is channeled through those "rebellious" Americans, who are animated by virulent protest and view themselves as rightful denunciators of their homeland and of its "air-conditioned nightmare," to quote Henry Miller. Filtered through such hate, our love is made lucid and permissible. That is why the counterculture movement of the 1960s and 1970s enabled European youths to embrace rock, rhythm and blues, the hippies, and the beatniks while, at the same time, they condemned the Vietnam War. They thought they were challenging the Empire, but they were really adopting it as their own.

But Moore is no Bob Dylan—or Dennis Hopper, or Francis Ford Coppola, or Allen Ginsberg, who all produced works that outlasted their political beliefs—and the July 1 screening at the Rex, while applauded, did not receive a 20-minute ovation. It was as though the audience felt cheated by the director—under the guise of making them laugh, he had treated them as idiots. It wasn't simply that Moore uses blatant caricatures, dramatically oversimplifies, and makes a cheap play for tears. Rather, it is because, to draw voters away from Bush, he uses precisely the same weapons as those used by the Republican propaganda machine: disinformation, short cuts, omissions. To portray prewar Iraq as an idyllic country where people danced and had fun and got married, where children played and laughed, borders on the despicable. Even the left-leaning *Monde Diplomatique* would never have painted such an uncritical picture. This mimicking of

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conservative propaganda reduces *Fahrenheit 9/11* to a simplistic militant manifesto. Truth becomes a matter of editing, to the detriment of any sense of complexity or objectivity. To watch a Moore film is to be told the world comprises only nasty plutocrats ready to divide the globe for maximum profit and the gentle victims of their greed.

But people, including French people, do not like to be manipulated like this. The hatred that Bush engenders on this side of the Atlantic alone is not enough to make Moore lovable. The French feel Moore doesn't teach them anything new and that his arguments are aimed at their gullibility rather than their intelligence. In other words, the French people don't like being treated as though they are American voters. It's notable that, immediately after Cannes, *Le Nouvel Observateur*—which spearheaded the fight against the Iraq war, going so far as to compare Bush to Adolf Hitler, Osama bin Laden, and Saddam Hussein—trashed *Fahrenheit 9/11*, with one piece lamenting the "sentimental and narcissistic Palme" awarded to Moore.

On the one hand, this movie and the success it has garnered in the United States is proof that American democracy is stronger than the machinations of the Bush family or the scheming of Donald Rumsfeld and Dick Cheney. Through the freedom of the press, the American citizenry has proved able to stand up to an authoritarian administration—despite the ongoing war in Iraq and the atmosphere of fear cultivated by the White House in the name of the fight against terrorism.

But *Fahrenheit 9/11*, simplistic and manipulative, doesn't do justice to this democracy. And the French can see through it. They love clowns, but they prefer authentic talent and works that weather the ages, and they are beginning to find that the zany antics of Moore leave something of a bad taste. It would be wonderful if *Fahrenheit 9/11* succeeded in taking votes from Bush, but the fall of the White House's present tenant might well bring about Moore's as well, for he is too close to his enemy not to disappear along with him. ■

Will Michael Moore turn on the Democrats?

Crashing the Party

BY JASON ZENGERLE

IT'S NOT OFTEN that a U.S. political campaign is launched on foreign soil. Then again, it's not often that a U.S. political campaign revolves around a major motion picture. So, when Michael Moore went to France in late May for the world premiere of his movie *Fahrenheit 9/11* at the Cannes Film Festival, he treated the occasion like a political convention.

Speaking at a packed press conference during the festival's opening days, Moore vowed that *Fahrenheit 9/11*, which at that point did not have an American distributor, "will be shown in the United States before the election, have no fear of that." The film, he predicted, "will be like Toto pulling the curtain back so the [American] people can see what is really going on, and they're going to be shocked, and they're going to be in awe, and they are going to respond accordingly." As for what the appropriate response would be, there was little doubt. "The problem," Moore explained, "is in the White House." A few days later, *Fahrenheit 9/11* won the festival's top prize, the Palme d'Or. As Moore soaked up the adulation, he sounded less like a filmmaker receiving an award than a candidate accepting a nomination. "Thank you very much for your support," he told a black-tie crowd that had just given him a twelve-minute standing ovation. "And goodbye, Mister Bush."

EDEL RODRIGUEZ

Like any campaign kickoff, Moore and his team had laid the groundwork for his Cannes performance well in advance. At the beginning of May, Moore hired Chris Lehane, the Democratic operative who served as Al Gore's press secretary during the 2000 presidential campaign, to help with *Fahrenheit 9/11*'s publicity. Meanwhile, Miramax, the film studio that financed *Fahrenheit 9/11*, tapped the Glover Park Group—a political consulting firm that boasts a number of veterans of the Clinton White House and the Gore campaign—to devise a nationwide promotional effort. "The idea in rolling this film out," says one person who worked on *Fahrenheit 9/11*'s publicity campaign, "was to

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make it a part of the political conversation before the film was released."

Sure enough, *Fahrenheit 9/11* became part of that conversation on May 5, when *The New York Times* reported on its front page that the Walt Disney Company, which owns Miramax, was refusing to distribute the picture. The article reported that Disney was balking at distributing the Bush-bashing film because, Moore's side alleged, the company was afraid of jeopardizing tax breaks it receives for its theme parks and hotels in Florida, where the president's brother, Jeb Bush, is governor. The *Times* story ignited a media firestorm, and soon, Moore was everywhere—from National Public Radio to CNN to (the Disney-owned) ABC—blasting Mickey Mouse for political censorship. "According to today's (May 5) *New York Times*, [*Fahrenheit 9/11*] might 'endanger' millions of dollars of tax breaks Disney receives from the state of Florida because the film will 'anger' the Governor of Florida, Jeb Bush," Moore wrote in a missive posted on his website—neglecting to mention that the allegation in the *Times* story came from his own agent, Ari Emanuel, and that Disney, in the same story, strenuously denied the charge, saying it had told Miramax and Emanuel a year earlier that it wouldn't distribute the film because the company preferred to be nonpartisan. It was the type of trick—selectively quoting from an impartial source—normally used in political campaign ads.

The Disney controversy fueled so much interest in *Fahrenheit 9/11* that, when the film won the Palme d'Or—a prize that usually is little-noticed in the United States—it was a national news story. And the media furor didn't let up. In the weeks between Cannes and the film's U.S. premiere in late June, Moore's team sought to create a story a day about the film and win each news cycle. One day, it was a story about the film finding an American distributor. Another day, it was the film's distributors turning a routine dispute with the Motion Picture Association of America over the film's R rating into a major news story by retaining former New York Governor Mario Cuomo to appeal the matter. On yet another day, it was Moore announcing that his website was being hacked, presumably by sinister conservative forces, and that he was going to press charges against the culprits. "This has been as publicity driven a motion picture as we've ever done," says Tom Ortenberg, the head of Lions Gate Entertainment, which is part of the consortium distributing *Fahrenheit 9/11*.

By the time *Fahrenheit 9/11* opened to sold-out theaters across the country on June 25, it was clear Moore had gotten his wish: He was now a central player in the presidential campaign. "If you had interviewed Karl Rove six weeks ago and you said to him, 'What do you think of the Moore thing?' he'd probably reply, 'It's at the margins, nobody cares,'" says the person who worked on *Fahrenheit 9/11*'s publicity campaign. "I don't think Rove would agree that nobody cares right now."

Indeed, Moore has become a repository for the hopes and dreams of liberals who are livid at President Bush but uninspired by mainstream Democrats like John Kerry. Until early this year, these liberals had Howard Dean to get behind. But, when his campaign imploded, they were left in the lurch, their political sentiments finding an outlet only in their bulk purchases of Bush-bashing books like Richard Clarke's *Against All Enemies* or Ron Suskind's *The Price of Loyalty*. Now, Moore has come to their rescue by mounting what is essentially a parallel presidential campaign.

Moore's campaign shares the Kerry campaign's goal of evicting Bush from the White House. But, unlike the Kerry campaign, Moore's effort is radical and angry enough to appeal to liberals who, like Moore, believe the Democratic Party has been too soft in its opposition to the Bush administration and the war in Iraq. "There's a tremendous appetite among Democrats to have someone say the things that have been bothering them for the last couple years," says Lehane. "[Moore] and this movie have come along at a time when people are looking for someone to get up there and say something interesting. He's filled that void." Or, as Moore himself recently told *Entertainment Weekly*, "[W]e can't leave this up to the Democrats. It's too serious now. I mean, this is a party that can't even win when they win. They lose when they win, you can't get more pathetic than that. We have to save them from themselves." The question confronting Democrats is: If Moore is their savior, who will save them from Moore?

Now that *Fahrenheit 9/11* has broken the record for the highest-grossing documentary of all time, raking in $61 million through last weekend, Moore's challenge is to maintain the momentum of his anti-Bush campaign. No stranger to self-promotion, he's likely up to the task. For almost all of his projects, Moore has mounted large-scale publicity tours—for his last book, *Dude, Where's My Country?*, he traveled to 58 cities in America and Europe—and he's certain to hit the road between now and November. In addition to a tour that will most likely take him to major U.S. cities and college towns, the filmmaker, according to people close to him, will likely speak to a number of progressive organizations in the coming months, and he is fielding offers to address labor groups and even some Democratic-controlled state legislatures. Meanwhile, the National Education Association showed the film to its 11,000-plus members at its annual convention this week, and the NAACP will do the same at its convention in mid-July. What's more, the Congressional Black Caucus is planning to do a series of events around *Fahrenheit 9/11* at black churches across the country. Then, in September, when *Fahrenheit 9/11* will likely still be playing in some theaters, Moore plans to release the DVD of the movie—which will occasion another round of publicity and promotional efforts. Moore has further vowed to visit swing states in the weeks before the election. Says one person close to Moore: "He isn't going away."

Moore's parallel presidential campaign poses a dilemma for Democrats. The Kerry campaign—mindful of the

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heat Wesley Clark took in the Democratic primaries when Moore, appearing on stage with Clark at a rally, accused President Bush of being a "deserter"—is keeping its distance. While it obviously appreciates the scrutiny Moore and his film are bringing to bear on the Bush administration, a campaign spokesperson was quick to announce that the Massachusetts senator hasn't seen *Fahrenheit 9/11* and doesn't plan to. "The campaign will keep an arm's length from the film," says a Kerry adviser. "There's no upside to embracing a filmmaker who is likely to pop off at any moment with statements as inflammatory as they are impolitic."

Other Democrats, however, aren't so chary of Moore or his effort. In late June, Moore had a VIP screening of *Fahrenheit 9/11* at Washington, D.C.'s Uptown Theater. In attendance were a host of prominent Democrats—including Iowa Senator Tom Harkin, Florida Senator Bob Graham, California Senator Barbara Boxer, and numerous members of the Congressional Black Caucus. Even some of *Fahrenheit 9/11*'s favorite targets, such as Senate Minority Leader Tom Daschle—who Moore mercilessly lampoons in the movie for being insufficiently opposed to Bush and the war in Iraq—dutifully showed up. (After the screening, Moore told *Time*, Daschle "gave me a hug and said he felt bad and that we were all gonna fight from now on. I thanked him for being a good sport.")

Although the applause at the Washington, D.C., event was more muted than at the New York and Los Angeles VIP screenings, where liberal celebrities like Leonardo DiCaprio and Rob Reiner gave it raucous receptions, the presence of so many Democrats—especially those Senate Democrats, who delayed a vote on a defense bill so they could attend—spoke louder than any standing ovation. And, just in case his presence was insufficient, Democratic National Committee Chairman Terry McAuliffe appeared on the red carpet after the screening to gush about the film. "I think anyone who sees this movie will come out en masse to make sure John Kerry is elected president this November," he told a scrum of reporters. As for some of *Fahrenheit 9/11*'s more fantastical ideas, such as Moore's implication that the war in Afghanistan was fought to build an oil pipeline for Unocal, McAuliffe refused to denounce them. "I will check into a lot of the issues myself about the pipeline and others," the head of the Democratic Party said. "But he raises a lot of very legitimate questions."

Democrats are willing to look the other way while Moore spins outlandish conspiracy theories because they view the filmmaker as a means to an end. "Even a fair number of people who are partisan Democrats say the movie is the work of loony tunes," concedes one Democratic strategist. "But it's bizarre how little has sunk in with the public about the Bush family's connections to the Saudi royal family and how often they've bailed the Bush family out, so a little more oxygen under that can't hurt." Another Democratic strategist explains: "This film is important and has power in this cycle."

MOORE AND HIS movie have already had a tremendous impact on one critical portion of the electorate: the left—the same folks who were inspired by Dean's candidacy or who, angered by the Democratic Party's swing toward the center during the Clinton years, cast their ballots for Ralph Nader in 2000. On a Monday night in late June, just after *Fahrenheit 9/11*'s record-setting opening weekend, the liberal group MoveOn.org hosted more than 4,000 house parties across the country, at which some 55,000 people showed up to listen to a live webcast featuring Moore. It was the biggest such event in MoveOn's six-year history, according to MoveOn PAC Field Director Adam Ruben. "In Portland, we had nine hundred people at one event," Ruben reported. "In Philadelphia, we had seven hundred people at one party, and sixty percent of them said they'd never been involved in politics before."

In Newton, Massachusetts, an affluent suburb of Boston, William Saunders was hosting his first MoveOn event. The editor of *Harvard Design Magazine*, Saunders was apprehensive about who would show up at his house—which he had decorated with an American flag and a Kerry campaign sign. "I just hope none of them are psychos or Republicans with firebombs," he said before the party. But Saunders's fears were unfounded: The 40 or so people who gathered in his living room to munch on pita and baba ghanoush and sip beer and Pinot Grigio were white, upper-middle-class liberal professionals like himself.

When Moore got on the webcast, he looked optimistically ahead to the coming campaign. "I'm so encouraged, I really haven't had this much hope in three and a half years," Moore said. But Moore didn't want his followers to get complacent. He urged them to take a weekend in October to visit a swing state and do literature drops or call senior citizens. And he asked them to identify five nonvoters and "adopt them," making sure they voted against Bush in November. "None of us wants this just to be a movie where people just go to see the movie, eat some popcorn, and then go home," he said.

Moore then took questions that had been submitted to MoveOn by e-mail. One person asked Moore's advice to the Kerry campaign. "Do not spend the next four months moving toward the right in order to get those votes that you think you need to get out there, wherever that place is. ... Being a weak-kneed, wimpy Democrat is a sure way to lose." What would Moore like to see from a President Kerry in his first 100 days? "In the first hundred days, bring the troops home and help organize and support the international force that the Iraqis approve of."

Moore's campaign seemed to have the desired effect, at least in Saunders's living room. Although many of those in attendance were hardly Kerry fans—indeed, some even said they planned to vote for Nader since Kerry was certain to win Massachusetts—a number of them nevertheless made plans to travel to New Hampshire, the nearest swing state, in the coming weeks to register voters and go door to door for Kerry. Some said they would write letters to newspapers in

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swing states throughout the country attacking Bush or supporting Kerry. "The 2004 election is triage," said one woman. "We need to stop the bleeding, and then we can address the systemic problems."

But that, in the end, may be the greatest danger Moore poses to Kerry and the Democratic Party. Because, while Kerry is currently benefiting from the "anybody but Bush" attitude gripping large parts of the left—as evidenced by his impressive fund-raising and the surprising absence of intra-party squabbling—that unity will likely be a thing of the past if he wins on November 2. Not everyone politically inspired by *Fahrenheit 9/11* subscribes to Moore's decidedly out-of-the-mainstream worldview, but the movie has clearly radicalized some voters. If Kerry wins in November, these Michael Moore Democrats may wrongly interpret the victory as a mandate for him and the rest of the Democratic Party to govern from the left. "I think we've been feeling this for the past few months, that there's been this shift in the country, that people are coming around," Moore said during the MoveOn webcast, as heads nodded in Saunders's living room.

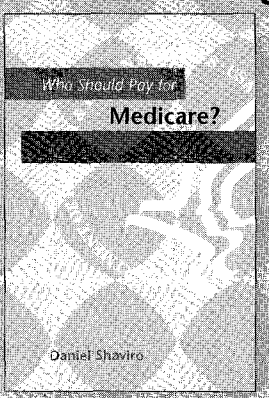
And, when Kerry doesn't do the things Moore and his fellow travelers expect him to do—like pull American troops out of Iraq in the first 100 days—they are likely to turn on him. "Kerry will have more of a problem dealing with his base than any Democratic president ever," says one of the few Democratic strategists concerned about Moore's growing role in this presidential campaign. "If Kerry wins, some of the people who voted for him will have expectations he won't be able to meet. Only President Michael Moore could meet them." In fact, Moore has already signaled his intent to focus a critical eye on Kerry, recently telling *Time*, "When Clinton was President, I went after him. And if Kerry's President, on day two I'll be on him."

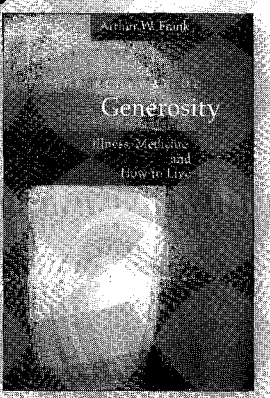
The difference may be that, when Clinton was president, liberal Democrats were quiescent enough to let him govern from the center; he embraced welfare reform and fiscal conservatism without suffering a reelection primary challenge. In a Kerry presidency, the Democratic Party's far more energized left—conditioned by Moore to guard against Democratic sellouts—may not be so forgiving.

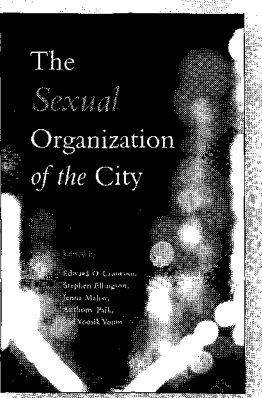
But, for now, that possibility doesn't seem to bother many Democratic officials. Whatever qualms they may have about Moore, they're pushing them aside and welcoming his support. "Is the Democratic Party embracing something they're ultimately going to have to distance themselves from? I don't know, it's possible," says one Democratic strategist. "But I think this film is emblematic of the fact that all parts of the party are embracing the common goal of getting Bush out." Or, as Chris Lehane, the Democratic operative turned Moore political adviser, puts it, "I think the focus from everyone in the party right now is to follow the Al Davis game plan: Just win, baby." ■

PUBLIC HEALTH

New from Chicago







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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Accusation

WHAT WE SEE FIRST are fireworks, celebrating Al Gore's victory over George W. Bush in the Florida vote, therefore in the presidential election of 2000. The television announcements of this result are soon followed by reversals, then by the maneuvers that confirmed Bush's election. Michael Moore thus launches his two-hour documentary attack on Bush with the new president's arguable right to the job. Moore then specifies presidential appointments that, though not corrupt, certainly drip with moneyed cronyism. In this atmosphere—of control by capitalist hegemony—Moore details how the administration heated up the public about terrorism.

FAHRENHEIT 9/11
(Lions Gate)

Now the title of the film appears, along with Moore's authorial credit. Then comes, cinematically speaking, the film's most effective touch—a minute or so of black screen during which we hear distant crowd rumblings and sirens. We wonder. Suddenly we see agonized faces. These people are watching the World Trade Center disaster.

The positioning of this sequence, between the early propaganda for public jitters and the march to war, has a strong implication: Moore is saying that the disaster was of use to Bush. Something that was possibly not on Moore's mind, though he put it in my head: 9/11 was to Bush what the burning of the Reichstag in 1933 was to the newly installed Chancellor Hitler, a disaster contrived by an opponent (the fire was not, as was once thought, set by the Nazis themselves) that, in the government's view, was at once a proof of its policy and a means to advance it. Moore underscores this thought by calling his film **FAHRENHEIT 9/11**. His title caroms off the title of Ray Bradbury's novel *Fahrenheit 451*, which is the temperature at which books burn, by which burning a totalitarian regime progresses. Moore is telling us that, to Bush, 9/11 was a gift from the terrorists to advance his plans against them. And as some of the film's early data mean to show, the case against terrorism, sound enough in itself, was strongly colored by at least two other considerations: oil and sheer imperialism. (Not quite incidentally, I note that Moore's title had a special edge for me. Back in my book-publishing years, I was the editor of Bradbury's novel. He is reportedly angry at Moore's exploitation of the title, which is understandable enough; yet I couldn't help being tickled by this evidence that Bradbury's title is now common currency.)

What supports Moore's implication is that the invasion of Afghanistan, on the ground that Osama bin Laden was based there, was made possible by the terrorist attacks that bin Laden had planned. Before the Afghanistan punitive venture was finished (it is still unfinished), Bush and Co. announced that bin Laden was connected to Saddam Hussein, thus the Iraq invasion must follow—with seeming logic but with (quickly discernible) different motives. The Iraq invasion soon led to the biggest public relations gaffe so far in the Bush administration: the president's landing on an aircraft carrier a few months later, where he proclaimed, under a banner stating "Mission Accomplished," that the Iraq war had been won.

Moore proceeds to explore some of the horrors of the Iraq conflict. This survey includes glimpses of Iraqi civilian sufferings and a visit to an American military hospital where we see amputees, some of the injured who have become marginalia in the reporting of battle casualties. (Moore omits the familiar shot of the toppling of a Saddam Hussein statue, possibly because it would redound to Bush's credit.) Eventually, after traversal of ruin and horror, the film leads to an extensive account of a woman named Lila Lipscomb, a resident of Flint, Michigan—Moore's hometown—who is at first proud of her son's place in the invading force but is later seen in heart-wrenching moments after he is killed.

Moore's chronicle of this war keeps the blood boiling. Still, all through the film there are bumps and crevices. It was silly, even debasing of the enterprise, to include personal pokes and incidental gibes. Moore tells us that Bush, in his first year in the White House, spent 42 percent of his time on vacation. Bush adequately replies to a question about it by saying that being out of Washington doesn't mean that he is not working. Bush's face, at the Oval Office desk while he is waiting to begin a television speech, betrays nervous sidewise glances, but this might also have been true of Abraham Lincoln if he had been readying himself for the networks. Bush's verbal slips could have been left to David Letterman's regular feature of presidential glitches. To show Bush and others being made up for television is hardly a disclosure: who isn't made up for the camera? Paul Wolfowitz licking his comb and running it through his hair before going on camera looks stupid, but the real stupidity is his failure to see that he was already on camera. John Ashcroft singing a patriotic ballad that he wrote is stupider, because he did it for the camera. But history will judge Wolfowitz and Ashcroft by matters other than hair-styling and song. The insertion of a cowboy parody of Bush and Dick Cheney and Donald Rumsfeld is cheap, as is the insert from *Dragnet* meant to mock a Bush remark.

Equally regrettable is the Michael Moore persona that occasionally intrudes in all its smugness. His previous films, *Roger and Me* and *Bowling for Columbine*, which in themselves worked for worthy causes, were smirched with that persona. For instance, in *Columbine* he interviewed Charlton Heston about

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gun control in a way that was meant to show Moore's courage but was only a facile shot at a sitting duck. Here, when he finds out that some congressmen haven't even read Ashcroft's Patriot Act, he gets into an ice cream truck and rides around Washington reading the bill over a loudspeaker. This is an antic, not a protest. Even more ostentatious are his accostings of congressmen in the street asking them to have their children enlist for service in Iraq. This is not righteous vigor, just exhibitionism.

Worst perhaps is Moore's comment that, when the United States invaded Iraq, we were attacking a country that had never attacked us or threatened attack. This is literally true but contextually inane. The Gulf War had been caused by a bestial dictator, and ten years later many liberal Americans believed the reports of the dictator's weapons of mass destruction. Some of us, however, felt that whether or not such weapons existed, whether or not Saddam was linked with 9/11, the idea of America launching a pre-emptive war was shocking and in this case immensely dangerous, with the potential to ramify beyond anyone's vision. The military intrusion into the complicated Arab-Islamic world, of which Iraq is only a part, promised immense and long-lasting troubles. We are now seeing only the beginning of them.

Toward the end of Bill Clinton's stay in the White House, Hillary Clinton memorably charged that he was the target of a right-wing conspiracy. Moore never mentions either of the Clintons, but his film can easily be construed as an argument for Senator Clinton's accuracy: that, whatever its target, a right-wing bloc exists; that this bloc has taken over the White House and, for its own solipsistic reasons, has jimmied this country into a war of which the duration and the consequences are unforeseeable. *Fahrenheit 9/11* is sometimes slipshod in its making and juvenile in its travesty, and of course it has no interest in overall fairness to Bush. But it vents an anger about this presidency that, as the film's ardent reception shows, seethes in very many of us. ■

JENNIFER HOMANS ON DANCE
A Real Bard

CHRISTOPHER WHEELDON has become ballet's new superstar. At thirty-one, he is perhaps the most sought-after ballet choreographer in the world: he has created original works for San Francisco Ballet, the Royal Ballet, and the Hamburg Ballet, and in 2001 he was appointed to the coveted position of resident choreographer at New York City Ballet. The subject of countless effusive articles in the British and American media, he recently "made" *Time* magazine and was featured in a glowing and glossy spread in *The New York Times Magazine*. He is the recipient of the London Critics' Circle Award, the American Choreography Award, and the Olivier Award. Even more auspiciously, the British-born choreographer has been proclaimed the artistic successor not just to George Balanchine, but also to Jerome Robbins, Frederick Ashton, and Kenneth MacMillan. The mantle of ballet in the twenty-first century would seem to rest on his shoulders.

CHRISTOPHER WHEELDON (New York City Ballet)

Is Wheeldon really that good? Until now, it has been difficult to say. His work has been uneven. *Morphoses* and *Polyphonia* are superbly strange and moving, but many of his other ballets have not gone beyond accomplished nods to the ballet masters whom he is meant to succeed. *Mercurial Manoeuvres* is a sparkling tribute to the sophisticated symmetries and off-balance classicism of Balanchine; *Variations Sérieuses* evokes Robbins, but falls short of his piercing wit; *Carnival of the Animals* feels like Ashton, minus the charm; and works such as *Mesmerics*, *Liturgy*, and *Continuum* echo MacMillan's pliable aesthetic but never quite make their point. (A woman sitting behind me at *Liturgy* commented, "It was mostly exercises, wasn't it?") But this spring, Wheeldon premiered *Shambards*, a short but stunning ballet for New York City Ballet. He appears to have found his voice: it is strong and distinct and may help to set classical ballet on a new course.

Shambards does not tell a story, like *Swan Lake* or *Sleeping Beauty*. Nor is it an abstract work in the blue-backdrop, "leotard ballet" tradition pioneered by Balanchine. It is a dance structured around geography, history, and memory: we are in Scotland, on the moors, in a misty, enclosed world of Romantic folklore and national pride. With a commissioned score by the Scottish composer James MacMillan, scenery by the British artist Michael Nagle, and lighting and costumes by New York City Ballet's Mark Stanley and Holly Hynes, the ballet presents a lush world of dark nights, scarlet suns, and thick, hazy light. The music and the dance echo traditional Scottish themes, but this is no celebration of folk harmony: in the course of the ballet, everything collapses from within, and this richly imagined world slides into decadence and destruction.

The ballet opens with a visually striking line of dancers, hands raised and linked in a stylized Scottish pose. They break apart, form, and re-form as the music gathers force, while Carla Körbes and Ask la Cour slowly enter to serene, simple notes of the piano. They dance a dripping and languid pas de deux in an exaggerated Romantic style, Körbes's body draping and folding in on itself, flowing in an unbroken phrase, as if through a humid veil of vague but powerful feelings. Encircled by the corps de ballet in a ritualistic dance, they finally depart, and another couple, Miranda Weese and Jock Soto, enter.

Their pas de deux is the heart of *Shambards*. Weese is dressed in a long tulle skirt recalling *La Sylphide*, the watershed Romantic ballet that premiered in 1832 and was itself set in an imagined, magical Scotland as conceived by the French poet Charles Nodier. At first, Weese moves in the ethereal, delicate style of that ballet, and Soto partners her in the customary gallant fashion, by the waist or hands. They sweep into a waltz of the most gorgeous, lilting kind. But things soon go badly awry. He takes her cat-like by the nape of the neck: her neck bends and the spine gives way. What follows is an extraordinary dance, violent and beautiful. It is still lyrically Romantic—except that Weese's neck

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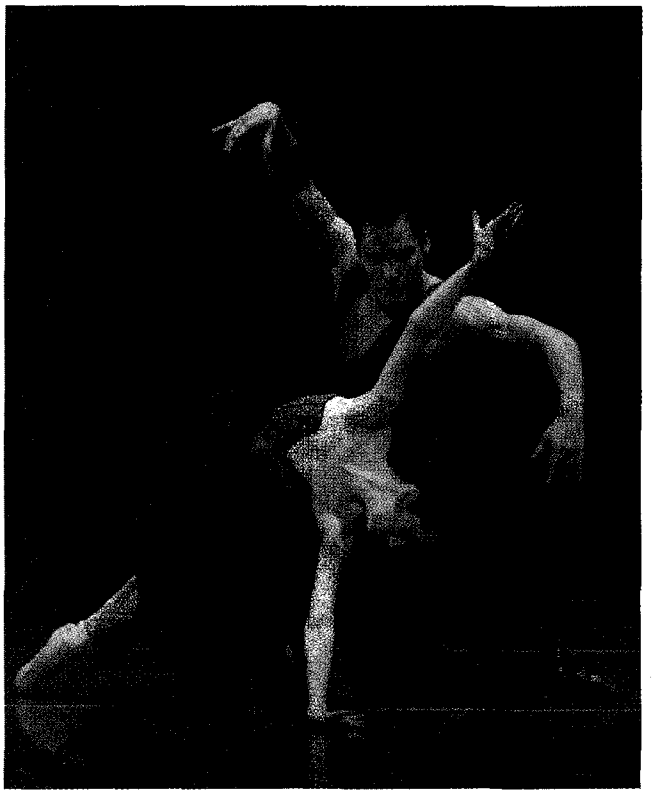
keeps breaking back, flinging forward and sending shudders through the otherwise strong and fluid movement. We see clear, formal lines shatter and reconstitute at such lightning speed that the flow of the dance is never disrupted, and the yanking, destructive movements seem almost sublime. Finally, she collapses across his arms.

It is a tour de force. And there are other excellent dances as well. A group of men emerge from the dark of night, as if on a mythic moor, to the somber strains of a Scottish folk dance. They break into a bracing, rhythmic performance that is a vigorous affirmation of traditional forms, expanded and amplified by demanding classical leaps and turns. But at moments it also borders on parody, with its exaggerated shadows, too-deep hues, and fog-like atmosphere. Soto and Weese re-enter, fighting to sustain their doomed waltz as the music veers wildly off course. Eventually Weese collapses to the floor: the stage floods crimson, and Soto drags her limp, broken body through a column of dancers, who lie down ceremonially as he passes. As the curtain falls, Soto stands on this corpse-strewn battlefield, defiantly gripping Weese's dislocated arm.

What are we to make of all this? Some critics have found the ballet confused: who are these lovers, and why the blood and destruction? The narrative, they say, does not cohere. But this is a restricted reading, which does not do justice to Wheeldon's vision: *Shambards* is not a narrative, but instead a kind of emotionally charged magnetic field, which evokes the force exerted by nostalgia, tradition, folk pride, kitsch, and violence. It helps to know that James MacMillan dedicated his score to the twentieth-century Scottish poet Edwin Muir: the title *Shambards* derives from Muir's poem "Scotland 1941." MacMillan and Wheeldon apparently discussed the poem, which is a bitter and passionate condemnation of the arrogant illusions, the war and destruction, undergirding Scottish nationalism. In particular, Muir scorns the misty-eyed literary folklore of the Romantic era: "And mummied housegods in their musty niches/Burns and Scott, sham bards of a sham nation...." Muir believed that Scotland must join the larger world of European culture rather than burrow deeper into an imagined folk past. Strangely, the program notes say nothing of Muir or the poem, though the press was fully informed. This is a pity; the literary origin only strengthens the ballet.

This is not the first time that Wheeldon has created a ballet with unspecified but potent political overtones. *Morphoses*, for four dancers to music by György Ligeti, premiered just ten months after September 11. It begins with the dancers stretched flat across the floor in the shape of a cross; taking hands, they come together in an undulating, amoeba-like organism, which in turn becomes a circle of people, joined as if in a community. As the ballet progresses, dancers often rise up on toe, their bodies standing in tall, vertical lines; on the backdrop, towers of colored light periodically appear and disappear, creating a sense of structure—and loss. Soft shapes and spidery natural forms blend into this linear world, and lonely, upright figures melt into fetal positions; at one point, a dancer stands dead still on toe, swaying pendulum-like as her partner tests her vulnerable, pin-like point of balance. *Morphoses* is not "about" September 11, but its images resonate with those that dominated our lives that year. It is a haunting and moving work.



COURTESY NEW YORK CITY BALLET

***Miranda Weese and Jack Soto in* Shambards**

Wheeldon created both *Morphoses* and *Shambards* for New York City Ballet. For years now, the company has languished in the Balanchine repertory, its dancers dull and unengaged. In Wheeldon's ballets, by contrast, corps de ballet and soloists alike seem suddenly galvanized, their dancing focused, alive, and clear. The explanation for this, I think, is that Wheeldon's aesthetic grips this generation of dancers, whereas Balanchine's simply does not. It is important to understand how distinct their respective styles are. Balanchine embraced the elevated aristocratic *moeurs* of nineteenth-century ballet; his dancers had grace, manners, and above all style. They were fascinating and eccentric artists, and he gave their musical and theatrical instincts ample reign. His ballets were transparent, immediate, and forthcoming.

Wheeldon's dancers are an entirely different breed. Their bodies are opaque, stripped of social identity: not déclassé, but classless. They move with classical precision, but the emphasis is on shapes, lines, and smooth, sleek forms that never "spill" an arm or leg over the edge of a step. They are not personalities but modeling clay—classically trained, but tempered with a yoga-like, organic quality. In Wheeldon's best work, this is not a weakness but a strength: their command of the pushes, pulls, limits, and boundaries of the body's physics reveals newfound artistic dimensions. Wheeldon also has a taste for *Gesamtkunstwerk*: indeed, *Shambards* gains much of its effect from the way the choreography and music interlock with the scenery and lighting.

This style of dancing might seem a strange "fit" for a company rooted in Balanchine. In the past ten years, however, Peter Martins, City Ballet's artistic director, has moved the company steadily away from Balanchine's idealistic, formal aesthetic toward a more explicitly drama-

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tic, expressionist art. In the hands of choreographers less talented than Wheeldon, this can be artistically disastrous: witness ballets such as Lynne Taylor-Corbett's *Chiaroscuro* (1994), which ponders "relationships" with gut-churning self-indulgence; or Martins's own choreography, which consistently mistakes the busy multiplication of steps for innovation, and then covers up with glamorous "for the effect" costumes, sets, and lighting. As if to underscore the shift, for this season's tribute to Balanchine Martins commissioned a ballet by the Russian choreographer Boris Eifman, whose vapid, kitschy choreography masquerades emotions (and sex) as meaningful art. This is not Balanchine's company anymore.

For City Ballet, then, Wheeldon is a saving grace. Though he has shown a penchant for slick productions, and can be vague or obscure, he is no ersatz neoromantic. Indeed, his work is closer to that of the Scottish choreographer Kenneth MacMillan, who was Wheeldon's mentor for several years before his death in 1992. In his youth MacMillan was influenced by the confused nostalgia and bitter realism of playwrights such as John Osborne and Britain's other "angry young men." As the 1950s, 1960s, and 1970s unfolded, MacMillan made dances about war, sex, love, and death. He choreographed to Mahler, Ravel, and Schoenberg, and often took on serious topics—not by acting them out necessarily, but by striving to expand the expressive range of ballet.

Wheeldon is not an "angry young man," but he does show signs of wanting to bring dance into a wider cultural world. This would be a welcome development. We live in urgent times, and ballet has been slow to catch up. It has dallied too long in postmodern efforts to deconstruct classical forms, basked too much in the chic and the wealth of the 1990s, spent too many resources trying to recoup a glorious past. Wheeldon clearly values the inherent beauty of ballet; he has the skill, intellect, and talent to make the art matter. *Shambards* is a step in the right direction. We need real bards in this age of sham nations. ■

Helen Vendler

The Ocean, the Bird, and the Scholar

How the arts help us to live.

WHEN IT BECAME USEful in educational circles in the United States to group various university disciplines under the name "The Humanities," it seems to have been tacitly decided that philosophy and history would be cast as the core of this grouping, and that other forms of learning—the study of languages, literatures, religion, and the arts—would be relegated to subordinate positions. Philosophy, conceived of as embodying truth, and history, conceived of as a factual record of the past, were proposed as the principal embodiments of Western culture, and given pride of place in general education programs.

But this confidence in a reliable factual record, not to speak of faith in a reliable philosophical synthesis, has undergone considerable erosion. Historical and philosophical assertions issue, it seems, from particular vantage points, and are no less contestable than the assertions of other disciplines. The day of limiting cultural education to Western culture alone is over. There are losses here, of course—losses in depth of learning, losses in coherence—but these very changes have thrown open the question of how the humanities should now be conceived, and how the study of the humanities should, in this moment, be encouraged.

I want to propose that the humanities should take, as their central objects of study, not the texts of historians or philosophers, but the products of aesthetic endeavor: art, dance, music, literature, theater, architecture, and so on. After all, it is by their arts that cultures are principally remembered. For every person who has read a Platonic dialogue, there are probably ten who have seen a Greek marble in a museum; or if not a Greek marble, at least a Roman copy; or if not a Roman copy, at least a photograph. Around the arts there exist, in orbit, the commentaries on art produced by scholars: musicology and music criticism, art history and art criticism, literary and linguistic studies. At the periphery we might set the other humanistic disciplines—philosophy, history, the study of religion. The arts would justify a broad philosophical interest in ontology, phenomenology, and ethics; they would bring in their train a richer history than one which, in its treatment of mass phenomena, can lose sight of individual human uniqueness—the quality most prized in artists, and most salient, and most valued, in the arts.

What would be the advantage of centering humanistic study on the arts? The arts present the whole uncensored human person—in emotional, physical, and intellectual being, and in single and collective form—as no other branch of human accomplishment does. In the arts we see both the nature of human predicaments—in Job, in Lear, in Isabel Archer—and the evolution of representation over long spans of time (as the taste for the Gothic replaces the taste for the Romanesque, as the composition of opera replaces the composition of plainchant). The arts bring into play historical and philosophical questions without implying the prevalence of a single system or of universal solutions. Artworks embody the individuality that fades into insignificance in the massive canvas of history and is suppressed in philosophy by the desire for impersonal assertion. The arts are true to the way we are and were, to the way we actually live and have lived—as singular persons swept by drives and affections, not as collective entities or sociological paradigms. The case histories developed within the arts are in

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part idiosyncratic, but in part they are applicable by analogy to a class larger than the individual entities they depict. Hamlet is a very specific figure—a Danish prince who has been to school in Germany—but when Prufrock says, "I am not Prince Hamlet," he is in a way testifying to the fact that Hamlet means something to everyone who knows about the play.

IF THE ARTS ARE SO SATISFACTORY an embodiment of human experience, why do we need studies commenting on them? Why not merely take our young people to museums, to concerts, to libraries? There is certainly no substitute for hearing Mozart, reading Dickinson, or looking at the boxes of Joseph Cornell. Why should we support a brokering of the arts? Why not rely on their direct impact? The simplest answer is that reminders of art's presence are constantly necessary. As art goes in and out of fashion, some scholar is always necessarily reviving Melville, or editing Monteverdi, or recommending Jane Austen. Critics and scholars are evangelists, plucking the public by the sleeve, saying, "Look at this," or "Listen to this," or "See how this works." It may seem hard to believe, but there was a time when almost no one valued Gothic art, or, to come closer to our own time, *Moby-Dick* and *Billy Budd*.

A second reason to encourage scholarly studies of the arts is that such studies establish in human beings a sense of cultural patrimony. We in the United States are the heirs of several cultural patrimonies: a world patrimony (of which we are becoming increasingly conscious); a Western patrimony (from which we derive our institutions, civic and aesthetic); and a specifically American patrimony (which, though great and influential, has, bafflingly, yet to be established securely in our schools). In Europe, although the specifically national patrimony was likely to be urged as pre-eminent—Italian pupils studied Dante, French pupils studied Racine—most nations felt obliged to give their students an idea of the Western inheritance extending beyond native production. As time passed, colonized nations, although instructed in the culture of the colonizer, found great energy in creating a national literature and culture of their own with and against the colonial model. (We can see this, for instance, in the example of nineteenth- and twentieth-century Ireland.) For a long time, American schooling paid homage, culturally speaking, to Europe and to England; but increasingly we began to cast off European and English influence in arts and letters without, unfortunately, filling the consequent cultural gap in the schools with our own worthy creations in art and literature. Our students leave high school knowing almost nothing about American art, music, architecture, and sculpture, and having only a superficial acquaintance with a few American writers.

WE WILL ULTIMATELY WANT to teach, with justifiable pride, our national patrimony in arts and letters—by which, if by anything, we will be remembered—and we hope, of course, to foster young readers and writers, artists and museumgoers, composers and music enthusiasts. But these patriotic and cultural aims alone are not enough to justify putting the arts and the studies of the arts at the center of our humanistic and educational enterprise. What, then, might lead us to recommend the arts and their commentaries as the center of the humanities? Art, said Wallace Stevens, helps us to live our lives. I'm not sure we are greatly helped to live our lives by history (since, whether or not we remember it, we seem doomed to repeat it), or by philosophy (the consolations of philosophy have never been very widely received). Stevens's assertion is a large one, and we have a right to ask how he would defend it. How do the arts, and the scholarly studies attendant on them, help us to live our lives?

Stevens was a democratic author, and he expected his experience, and his reflections on it, to apply widely. For him, as for any other artist, "to live our lives" means to live in the body as well as in the mind, on the sensual earth as well as in the celestial clouds. The arts exist to relocate us in the body by means of the work of the mind in aesthetic creation; they situate us on the earth, paradoxically, by means of a mental paradigm of experience embodied, with symbolic concision, in a physical medium. It distressed Stevens that most of the human beings he saw walked about blankly, scarcely seeing the earth on which they lived, filtering it out from their pragmatic urban consciousness. Even when he was only in his twenties, Stevens was perplexed by the narrowness of the way in which people inhabit the Earth:

> I thought, on the train, how utterly we have forsaken the Earth, in the sense of excluding it from our thoughts. There are but few who consider its physical hugeness, its rough enormity. It is still a disparate monstrosity, full of solitudes & barrens & wilds. It still dwarfs & terrifies & crushes. The rivers still roar, the mountains still crash, the winds still shatter. Man is an affair of cities. His gardens & orchards & fields are mere scrapings. Somehow, however, he has managed to shut out the face of the giant from his windows. But the giant is there, nevertheless.

The arts and their attendant disciplines restore human awareness by releasing it into the ambience of the felt world, giving a habitation to the tongue in newly coined language, to the eyes and ears in remarkable re-creations of the physical world, to the animal body in the kinesthetic flex and resistance of the artistic medium. Without an alert sense of such things, one is only half alive. Stevens reflected on this function of the arts—and on the results of its absence—in three poems that I will take up as proof-texts for what follows. Although Stevens speaks in particular about poetry, he extends the concept to *poesis*—the Greek term for making, widely applicable to all creative effort.

LIKE GEOGRAPHY AND HISTORY, the arts confer a patina on the natural world. A vacant stretch of grass becomes humanly important when one reads the sign "Gettysburg." Over the grass hangs an extended canopy of meaning—struggle, corpses, tears, glory—shadowed by a canopy of American words and works, from the Gettysburg Address to the Shaw Memorial. The vacant plain of the sea becomes human when it is populated by the ghosts of Ahab and Moby-Dick. An unremarkable town becomes "Winesburg, Ohio"; a rustic bridge becomes "the rude bridge that arched the flood" where Minutemen fired "the shot heard round the world." One after the other, cultural images suspend themselves, invisibly, in the American air, as—when we extend our glance—the Elgin marbles, wherever they may be housed, hover over the Parthenon, once their home; as Michelangelo's Adam has become, to the Western eye, the Adam of Genesis. The patina of culture has been laid down over centuries,

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so that in an English field one can find a Roman coin, in an Asian excavation an emperor's stone army, in our Western desert the signs of the mound builders. Over Stevens's giant earth, with its tumultuous motions, there floats every myth, every text, every picture, every system, that creators—artistic, religious, philosophical—have conferred upon it. The Delphic oracle hovers there next to Sappho, Luther's theses hang next to the Grünewald altar, China's Cold Mountain neighbors Sinai, the B minor Mass shares space with Rabelais.

If there did not exist, floating over us, all the symbolic representations that art and music, religion, philosophy, and history, have invented, and all the interpretations and explanations of them that scholarly effort has produced, what sort of people would we be? We would, says Stevens, be sleepwalkers, going about like automata, unconscious of the very life we were living: this is the import of Stevens's poem "Somnambulisma," written in 1943. The poem rests on three images, of which the first is the incessantly variable sea, the vulgar reservoir from which the vulgate—the common discourse of language and art alike—is drawn. The second image is that of a mortal bird, whose motions resemble those of the water but who is ultimately washed away by the ocean. The subsequent generations of the bird, too, are always washed away. The third image is that of a scholar, without whom ocean and bird alike would be incomplete.

On an old shore, the vulgar ocean
rolls
Noiselessly, noiselessly, resembling
a thin bird,
That thinks of settling, yet never
settles, on a nest.

The wings keep spreading and yet
are never wings.
The claws keep scratching on the
shale, the shallow shale,
The sounding shallow, until by water
washed away.

The generations of the bird are all
By water washed away. They follow
after.
They follow, follow, follow, in water
washed away.

Without this bird that never settles,
without
Its generations that follow in their
universe,
The ocean, falling and falling on the
hollow shore,
Would be a geography of the dead:
not of that land
To which they may have gone,
but of the place in which
They lived, in which they lacked
a pervasive being,

In which no scholar, separately
dwelling,
Poured forth the fine fins, the gawky
beaks, the personalia,
Which, as a man feeling everything,
were his.

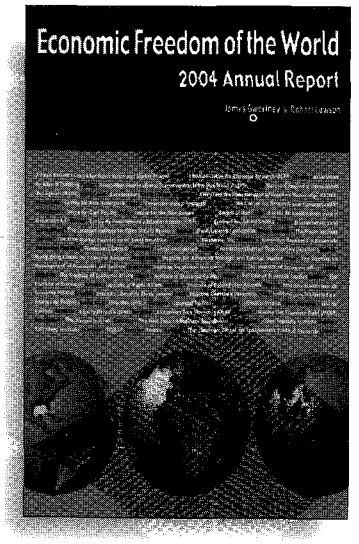
Without the bird and its generations, the ocean, says the poet, would be "a geography of the dead"—not in the sense of their having gone to some other world, but in the sense of their being persons who were emotionally and intellectually dead while alive, who lacked "a pervasive being." To lack a pervasive being is to fail to live fully. A pervasive being is one that extends through the brain, the body, the senses, and the will, a being that spreads to every moment, so that one not only feels what Keats called "the poetry of earth" but responds to it with creative motions of one's own.

Unlike Keats's nightingale, Stevens's bird does not sing; its chief functions are to generate generations of birds, to attempt to sprout wings, and to try to leave behind some painstakingly scratched record of its presence. The water restlessly moves, sometimes noiselessly, sometimes in "sounding shallow[s]"; the bird "never settles." The bird tries to generate wings, but never quite succeeds; it tries to inscribe itself on the shale, but its scratchings are washed away. The ocean is "falling and falling," the mortal generations are following and following. Time obliterates birds and inscriptions alike.

Imagine being psychically dead during the very life you have lived. That, says Stevens, would be the fate of the generations were it not for the scholar. Stevens does not locate his scholar in the ocean or on the shale, the haunts of the bird; the scholar, says the poet, dwells separately. But he dwells in immense fertility: things pour forth from him. He makes up for the wings that are never wings, for the impotent claws; he generates "fine fins," the essence of the ocean's fish; he creates "gawky beaks," opening in fledglings waiting to be fed so that they may rise into their element, the air; and he

"An invaluable contribution."

—*Nobel Laureate Douglass North*



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produces new garments for the earth, called not regalia (suitable for a monarchy) but "personalia," suitable for the members of a democracy. How is the scholar capable of such profusion? He is fertile both because he is a man who "feel[s] everything," and because every thing that he feels reifies itself in a creation. He gives form and definition both to the physical world (as its scientific observer) and to the inchoate aesthetic world (as the quickened responder to the bird's incomplete natural song). He is analogous to the God of Genesis; as he observes and feels finniness, he says, "Let there be fine fins," and fine fins appear.

Why does Stevens name this indispensable figure a "scholar"? (Elsewhere he calls him a "rabbi"—each is a word connoting learning.) What does learning have to do with creation? Why are study and learning indispensable in reifying and systematizing the world of phenomena and their aesthetic representations? Just as the soldier is poor without the poet's lines (as Stevens says elsewhere), so the poet is poor without the scholar's cultural memory, his taxonomies and his histories. Our systems of thought—legal, philosophical, scientific, religious—have all been devised by "scholars" without whose aid widespread complex thinking could not take place and be debated, intricate texts and scores could not be accurately established and interpreted. The restless emotions of aesthetic desire, the wing-wish and inscription-yearning of the bird, perish without the arranging and creative powers of intellectual endeavor. The arts and the studies of the arts are for Stevens a symbiotic pair, each dependent on the other. Nobody is born understanding string quartets or reading Latin or creating poems; without the scholar and his libraries, there would be no perpetuation and transmission of culture. The mutual support of art and learning, the mutual delight each ideally takes in each, can be taken as a paradigm of how the humanities might be integrally conceived and educationally conveyed as inextricably linked to the arts.

"SOMNAMBULISMA" IS THE ILlustration of Stevens's adage "Poetry is the scholar's art." What is necessary, asks "Somnambulisma," for creative effort? Emotion, desire, generative energy, and learned invention—these, replies the poem, are indispensable in the artist. But there is another way of thinking about art, focusing less on the creator of art than on those of us who make up art's audience. What do we gain in being the audience for the arts and their attendant disciplines? Let us, says Stevens, imagine ourselves deprived of all the products of aesthetic and humanistic effort, living in a world with no music, no art, no architecture, no books, no films, no choreography, no theater, no histories, no songs, no prayers, no images floating above the earth to keep it from being a geography of the dead. Stevens creates the desolation of that deprivation in a poem—the second of my three texts—called "Large Red Man Reading." The poem is like a painting by Matisse, showing us an earthly giant the color of the sun, reading aloud from great sky-sized tabulae which, as the day declines, darken from blue to purple. The poem also summons up the people of the giant's audience: they are ghosts, no longer alive, who now inhabit unhappily (having expected more from the afterlife) the remote "wilderness of stars." What does the giant describe to the ghosts as he reads from his blue tabulae? Nothing extraordinary—merely the normal furniture of life, the common and the beautiful, the banal, the ugly, and even the painful. But to the ghosts these are things achingly familiar from life and yet disregarded within it. Now they are achingly lost, things they never sufficiently prized when alive, but which they miss devastatingly in the vacancy of space among the foreign stars.

There were ghosts that returned
to earth to hear his phrases,
As he sat there reading, aloud,
the great blue tabulae.
They were those from the wilderness
of stars that had expected more.

There were those that returned
to hear him read from the poem
of life,
Of the pans above the stove,
the pots on the table, the tulips
among them.
They were those that would have
wept to step barefoot into reality,

They would have wept and been
happy, have shivered in the frost
And cried out to feel it again,
have run fingers over leaves
And against the most coiled thorn,
have seized on what was ugly
And laughed, as he sat there reading,
from out of the purple tabulae,
The outlines of being and its
expressings, the syllables of its law:
Poesis, poesis, the literal characters,
the vatic lines,

Which in those ears and in those thin,
those spended hearts,
Took on color, took on shape and
the size of things as they are
And spoke the feeling for them,
which was what they had lacked.

The ghosts, while they were alive, had lacked feeling, because they had not registered in their memory "the outlines of being and its expressings, the syllables of its law." It is a triple assertion that Stevens makes here: that being possesses not only outlines (as all bodies do) and expressings (in all languages) but also a law, which is stricter than mere "expressings." Expressings by themselves cannot exemplify the law of being: only *poesis*—the creator's act of replicating in symbolic form the structures of life—pervades being sufficiently to intuit and to embody its law. *Poesis* not only reproduces the content of life (its daily phenomena) but finds a manner (inspired, "vatic") for that content, and in the means of its medium—here, the literal characters of its language—embodies the structural laws that shape being to our understanding.

Stevens's anecdote-of-audience in "Large Red Man Reading" suggests how ardently we would want to come back, as ghosts, in order to recognize and relish the parts of life we had insufficiently noticed and hardly valued when alive. But we cannot—according to the poem—accomplish this by ourselves: it is only when the earthly giant of vital being begins to read, using poetic and prophetic syllables to express the reality, and the law, of being, that the experiences of life can be reconstituted and made available as beauty and solace, to help us live our lives.

HOW COULD OUR LIVES BE different if we reconstituted the humanities around the arts and the studies of the arts? Past civilizations are recalled in part, of course, for their philosophy and their history, but for most of us it is the arts of the past that preserve Egypt and Greece and Rome, India and Africa and Japan. The names of the artists may be lost, the arts themselves in fragments, the scrolls incomplete, the manuscripts par-

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tial—but Anubis and the Buddha and *The Canterbury Tales* still populate our imaginative world. They come trailing their interpretations, which follow them and are like water washed away. Scholarly and critical interpretations may not outlast the generation to which they are relevant; as intellectual concepts flourish and wither, so interpretations are proposed and discarded. But we would not achieve our own grasp on Vermeer or Horace, generation after generation, without the scholars' outpourings.

If we are prepared to recognize the centrality of artists and their interpreters to every past culture, we might begin to reflect on what our own American culture has produced that will be held dear centuries from now. Which are the paintings, the buildings, the novels, the musical compositions, the poems, through which we will be remembered? What set of representations of life will float above the American soil, rendering each part of it as memorable as Marin's Maine or Langston Hughes's Harlem, as Cather's Nebraska or Lincoln's Gettysburg? How will the outlines and the expressings and the syllables of American being glow above our vast geography? How will our citizens be made aware of their cultural inheritance, and become proud of their patrimony? How will they pass it on to their children as their own generation is by water washed away? How will their children become capable of "feeling everything," of gaining "a pervasive being," capable of helping the bird to spread its wings and the fish to grow their "fine fins" and the scholar to pour forth his "personalia"?

To link, by language, feeling to phenomena has always been the poet's aim. "Poetry," said Wordsworth in 1798, "is the breath and finer spirit of all knowledge; it is the impassioned expression which is in the countenance of all science." Our culture cannot afford to neglect the thirst of human beings for the representations of life offered by the arts, the hunger of human beings for commentary on those arts as they appear on the cultural stage. The training in subtlety of response (which used to be accomplished in large part by religion and the arts) cannot be responsibly left to commercial movies and television. Within education, scientific training, which necessarily brackets emotion, needs to be complemented by the direct mediation—through the arts and their interpretations—of feeling, vicarious experience, and interpersonal imagination. Art can often be trusted—once it is unobtrusively but ubiquitously present—to make its own impact felt. A set of Rembrandt self-portraits in a shopping mall, a group of still lifes in a subway, sonatas played in the lunchroom, spirituals sung chorally from kindergarten on—all such things, appearing entirely without commentary, can be offered in the community and the schools as a natural part of living. Students can be gently led, by teachers and books, from passive reception to active reflection. The arts are too profound and far-reaching to be left out of our children's patrimony: the arts have a right, within our schools, to be as serious an object of study as molecular biology or mathematics. Like other complex products of the mind, they ask for reiterated exposure, sympathetic exposition, and sustained attention.

The arts have the advantage, once presented, of making people curious not only about aesthetic matters, but also about history, philosophy, and other cultures. How is it that pre-Columbian statues look so different from Roman ones? Why do some painters concentrate on portraits and others on landscapes? Why did great ages of drama arise in England and Spain and then collapse? Who first found a place for jazz in classical music, and why? Why do some writers become national heroes, and others do not? Who evaluates art, and how? Are we to believe what a piece of art says? Why does Picasso represent a full face and a profile at the same time? How small can art be and still be art? Why have we needed to invent so many subsets within each art—within literature the epic, drama, lyric, novel, dialogue, essay; within music everything from the solo partita to the chorales of Bach? Why do cultures use different musical instruments and scales? Who has the right to be an artist? How does one claim that right? The questions are endless, and the answers provocative; and both questions and answers require, and indeed generate, sensuous responsiveness, a trained eye, fine discrimination, and a hunger for learning, all qualities we would like to see in ourselves and in our children.

Best of all, the arts are enjoyable. The "grand elementary principle of pleasure" (as Wordsworth called it) might be invoked more urgently than it now is to make the humanities, both past and present, mean something relevant to Americans. Once the appetite for an art has been awakened by pleasure, the nursery

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rhyme and the cartoon lead by degrees to Stevens and Eakins. A curriculum relying on the ocean, the bird, and the scholar, on the red man and his blue tabulae, would produce a love of the arts and humanities that we have not yet succeeded in generating in the population at large. When reality is freshly seen, through the artists and their commentators, something happens to the felt essence of life. As Stevens wrote in the third of my texts, "Angel Surrounded by Paysans," the angel of reality then briefly appears at our door, saying:

> . . . I am the necessary angel of earth,
> Since, in my sight, you see the earth
> again,
>
> Cleared of its stiff and stubborn,
> man-locked set,
> And, in my hearing, you hear its
> tragic drone
>
> Rise liquidly in liquid lingerings,
> Like watery words awash; like
> meanings said
>
> By repetitions of half meanings.
> Am I not,
> Myself, only half of a figure of a sort,
>
> A figure half seen, or seen for a
> moment, a man
> Of the mind, an apparition
> apparelled in
>
> Apparels of such lightest look that
> a turn
> Of my shoulder and quickly,
> too quickly, I am gone?

That art-angel of the earth, renewing our sense of life and of ourselves, is only half meaning, because we provide the other half. Among us are the scholars who interpret those half-meanings into full ones, apparelling us anew in their personalia. In the apparels of his messenger, Stevens is recalling these lines from Wordsworth's great ode:

> There was a time when meadow,
> grove, and stream,
> The earth, and every common sight
> To me did seem
> Apparelled in celestial light,
> The glory and the freshness of a
> dream.

The secular angel refreshing our sense of the world, apparelled in Wordsworthian light, stays only for a moment, our moment of attention. But that moment of mental acuity recalls us to being, the body, and the emotions, which are, peculiarly, so easy for us to put to one side as we engage in purely intellectual or physical work. Just as art is only half itself without us—its audience, its analysts, its scholars—so we are only half ourselves without it. When, in this country, we become fully ourselves, we will have balanced our great accomplishments in progressive abstraction—in mathematics and the natural sciences—with an equally great absorption in art, and in the disciplines ancillary to art. The arts, though not progressive, aim to be eternal, and sometimes are. And why should the United States not have as much eternity as any other nation? As Marianne Moore said of excellence, "It has never been confined to one locality." ■

Richard A. Posner
The People's Court

THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW
By Larry D. Kramer
(Oxford University Press, 363 pp., $29.95)

ONE OF THE LESS CONTROversial principles of American legal and political theory is "judicial supremacy," the idea that the Supreme Court has the final say on the meaning of the Constitution. If the Court holds that a federal statute that criminalizes the burning of the American flag violates the First Amendment, officials who continue trying to enforce the statute will be enjoined; if they disobey the injunction, they will be jailed for contempt of court; if Congress re-enacts the statute, the Court will promptly strike it down. And the public will accept that this is the legitimate way to resolve a constitutional controversy.

A small band of mainly left-leaning law professors, including Larry D. Kramer, are challenging this idea. (They have some odd-bedfellow allies among right-wing Court skeptics, such as Robert Bork.) They argue that the historical pedigree of the doctrine of judicial supremacy is dubious, and they advocate the rival—and until recently almost forgotten—doctrine of "popular constitutionalism." This is the idea that the highest authority for interpreting the Constitution is not the Supreme Court, but the American people.

Kramer's book is a history of popular constitutionalism, mainly from 1765 to 1841. Throughout this period, he argues, popular constitutionalism was the dominant theory of constitutional interpretation. Before and even after the federal Constitution came into force, the word "constitution" referred to an ill-defined set of political norms believed to be fundamental and, because rooted in natural justice and common sense, fully accessible to a lay intelligence. Legalism was derided as an alternative path of constitutional interpretation because of the limited professionalism of lawyers and judges. With the juries of this period allowed to decide issues of technical law as well as issues of fact, it was natural to suppose that the laity could interpret constitutional principles founded on common sense and natural justice.

Popular constitutionalism can explain, Kramer argues, why the Constitution contains no express grant of power to the Supreme Court to declare federal or state legislative or executive actions unconstitutional—the power known as judicial review (which is not to be confused with judicial supremacy, or the idea of a judicial monopoly of interpretive competence); and why the question of judicial review received relatively little attention in contemporaneous discussions of the Constitution. The power of judicial review was, in fact, implicit in the Constitution's grant to the Supreme Court of jurisdiction to decide cases arising under the Constitution and in the

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requirement that federal judges, like all other state and federal officials, take an oath to support the Constitution. These provisions obligated the Court to refuse enforcement to any law that was inconsistent with the Constitution.

But this was not because the Supreme Court was the supreme interpreter of that document; it was because the justices were required, like any other citizens, to follow the Constitution within the sphere of their responsibility. In exercising judicial review, judges were merely "the people's proxy," and judicial interpretations of the Constitution could therefore be overruled by the people—and not just through the cumbersome amendment process. The people would make their disapproval of a judicial interpretation of the Constitution known by petitions, demonstrations, civil disobedience, other forms of "popular resistance" up to and including force of arms, and appeals to the legislative and executive branches of government, which could reinstate the rule or practice that the Supreme Court had thought unconstitutional. Under the rubric of "departmentalism," a corollary of popular constitutionalism, each department (branch) of government could make up its own mind about what the Constitution meant and stick to its view whatever the other branches, including the judiciary, thought. Thus, the power of judicial review was less menacing than if it had been understood to connote judicial supremacy.

The Supreme Court did have "final" authority in the sense that it came last in the enforcement sequence. If Congress passed a law, the attorney general brought suit to enforce it against some individual, and the latter obtained a judgment on the ground that the law was unconstitutional, that was the end of the case. But if the people expressed their disapproval forcefully enough, the Court would back down in subsequent cases. And rare would be the case in which the Court found a statute to be unconstitutional; the people would already have issued their constitutional judgment when their representatives enacted it.

KRAMER QUOTES AN IMPRESsive number of contemporaneous public documents expressing the views that I have just summarized. But it is unclear just how representative these expressions are, or how far their authors were serious rather than merely flattering the population, which had a high opinion of itself. The original structure of the Constitution indicates considerable distrust for unalloyed populist democracy (a point that Kramer downplays); the only federal officials directly elected by the people were the members of the House of Representatives. The political regime created by the Constitution has been called "elite democracy." Yet in the heyday of popular constitutionalism the Supreme Court very rarely challenged Congress or the president. It invalidated state laws with some frequency, but this was unavoidable because of the dangers, visible from the nation's earliest days, of sectionalism. Owing to the blocking power of individual states in Congress, especially in the Senate, it would be very difficult for Congress (viewed in popular-constitutional terms as the authentic voice of the nation's people) to enforce the Constitution against states that decided to flout its commands. As Justice Oliver Wendell Holmes once put it, "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states."

The idea that lay people—or "ordinary Americans," a telling phrase that Kramer does not avoid despite his commitment to populism—are competent to deliver binding opinions on any legal question is wormwood, of course, to lawyers and judges. And not to them alone, but also to commercial interests and the propertied class: capital is secure only within a framework of reasonably clear rules and procedures administered by reasonably impartial professionals. As the nation modernized in the nineteenth century, the need to professionalize law was recognized, and since the Constitution was law, it was natural that eventually it would come to be understood as the preserve of the judiciary. Hence "judicial supremacy."

Kramer's treatment of the history of the struggle between popular constitutionalism and judicial supremacy after the end of Martin Van Buren's presidency in 1841 is just a sketch, occupying only twenty pages in a long book. He notes a number of instances in which the people kicked over the traces and forced the Supreme Court to back down on a constitutional issue. Yet the length of the *Lochner* era (*Lochner* v. *New York*, a Supreme Court decision that in 1905 invalidated a state maximum-hours law, came to symbolize the Supreme Court's stubborn opposition to Progressive legislation) and the defeat of Franklin Delano Roosevelt's Court-packing plan in 1937 could well be regarded as evidence of the triumph of the doctrine of judicial supremacy well before the current era of its assured triumph.

Kramer's narrative of the earlier history is riveting. Is it accurate? Professional historians will have the last word (pursuant to the doctrine of "disciplinary supremacy"). The legal historian Philip Hamburger has marshaled considerable evidence that, contrary to Kramer's claim, the Revolutionary generation believed that the duty of judges to conform their decisions to fundamental law came from the fact that they were judges, and therefore had a special competence to resolve legal (including constitutional) disputes, rather than from their being citizens who, like all citizens, had to obey fundamental law. One can discern some special pleading in Kramer's account, as when he says that Chief Justice John Marshall was stating a commonplace when he said in *Marbury* v. *Madison* that "it is emphatically the province and duty of the judicial department to say what the law is." (The reference was to constitutional law.) The "duty" part is the commonplace; judges, like other people, must obey the Constitution. But in the words "emphatically" and "province" and "say what the law is" (not just what the Court thinks it is) Marshall could be seen to be staking a claim to the Court's supremacy as interpreter of the Constitution.

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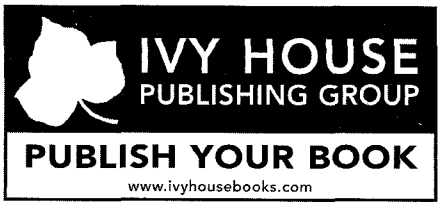

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I confess that after reading Kramer's book I find neither popular constitutionalism nor judicial supremacy an attractive doctrine, regardless of pedigree. The history of the American Revolution presaged, though very tamely, the three-stage Mirabeau-Robespierre-Napoleon history of the French Revolution. In both cases the Revolution, originally a bourgeois affair, was co-opted by anti-bourgeois extremists; then their policies proved unsustainable, and eventually revolutionary fatigue set in and something akin to the pre-revolutionary political order was restored. In its initial phase the American Revolution was dominated by Federalists such as Washington and Adams, who believed that the country should be run by the propertied class and that the masses should confine their political activity to the voting booth. These "elitists" gave way after 1800 to the Jeffersonian and Jacksonian Republicans. But after Van Buren's defeat order was restored; the United States rapidly became the quintessentially bourgeois republic that it remains to this day, with property and contract rights guaranteed by a professional judiciary, and constitutional law treated as ordinary law rather than as the emanation of the popular will.

Popular constitutionalism was characteristic of the middle—the anti-bourgeois—phase. Federalists did not worry much about popular constitutionalism until the election of Jefferson as president in 1800—whereupon the lame-duck Adams woke up and began packing the federal courts with his appointees in order to arrest Jeffersonian populism. It was his court-packing that led to Marshall's assertion of judicial authority in *Marbury* v. *Madison*.

We are no more likely to return to Jeffersonian and Jacksonian conceptions of popular constitutionalism than France is likely to go back to Thermidor. The early history of the United States was marked by political instability, which naturally engendered intense public interest in and debate over large issues of political theory. And the issues of constitutional moment that were debated, such as states' rights (versus federal power), trial by jury, and personal liberty, while not easy, were not so complex or technical as to exceed a lay understanding. Nor was the law so far professionalized that lawyers could plausibly claim that they should have a monopoly on constitutional interpretation: legal education was rudimentary; sources for legal analysis, such as published reports of previous judicial decisions, were few and difficult to come by; many judges had no legal training; and there were few professional police or prosecutors, with the result that the population was actively engaged in enforcing the law through such devices as the posse and the hue and cry. If it didn't like the law, the law wouldn't get enforced.

The small size of the American population, much of it (notably women and slaves) disfranchised, was also a factor. The views of any individual eligible to vote had much more political weight than is the case today, especially in state and local elections—and far more power was exercised at the state and local level than now. Civic interest and civic understanding have declined. People are preoccupied with their private pursuits, while the law has become exceedingly complex and the legal profession and judiciary formidably professionalized. The entire movement of the society, as it was so presciently described by Weber, has been to bring more and more spheres of activity under the rule of rationality, making the idea of restoring constitutional interpretation to the laity laughable to most people. It is one thing to believe that the Supreme Court is too aggressive; it is another thing (and it is Kramer's argument) to suppose that lay people could do a better job of interpreting the Constitution.

BUT THIS DOES NOT NECESSARILY make the doctrine of judicial supremacy a satisfactory alternative. It is true that the Constitution is a law, and that ascertaining the meaning of a law is normally a task for experts in law, namely judges, advised by the practicing bar and the legal professoriat. Still, most of the issues that are sufficiently novel to get all the way to the Supreme Court are political. They can be resolved only by making political judgments, and not by applying techniques one learns in law school and hones in the practice of law. (Anyone who doubts the political character of constitutional adjudication owes the rest of us an explanation for why the senatorial confirmation process for federal judges has come to be dominated by considerations of ideology.)

I mentioned flag-burning. There is nothing in the Constitution to guide a decision on whether burning the American flag is a form of protected political demonstration. The First Amendment says that Congress may not infringe "freedom of speech," but the term is not defined and it cannot be taken literally, since that would mean that defamation, criminal solicitation, betrayal of military secrets, child pornography, fraudulent advertising, parading without a permit, uttering obscenities on prime-time television, running naked through the streets to promote nudism, publishing trade secrets, and infringing copyrights would all be constitutionally privileged conduct. Virtually no one believes that any of those varieties of expression should be so privileged. The Supreme Court decides how much freedom of speech is too much, and it could have decided that flag-burning, like cross-burning (which the Court has held can be forbidden), goes too far. The Court could even have decided that, like assassinating one's political opponents, burning things is not "speech," though both are highly expressive actions. That would be literalism, to be sure; but when it suits the Court, the Court reads the Constitution literally. And while the Court claims to follow precedent, constitutional disputes clearly ruled by precedent tend not even to reach the Court but instead to be disposed of uncontroversially by lower courts. No precedent "controlled" the flag-burning issue until the Court decided it.

Maybe Supreme Court justices are simply better politicians than the leaders of the "political" branches of government, as judges like to refer to the executive and legislative branches—not more skillful but more far-seeing and wise, more "statesmanlike"—and so should be entitled to overrule those crasser political actors. But a more accurate observation is merely that judges have different backgrounds and perspectives, face different pressures and temptations, from those of other political actors. That is consistent with popular constitutionalism, according to which, as we know, judges are entitled (indeed, are required) to apply their constitutional views to the cases that come before them. The important point is that they are no more entitled to do so than the other branches.

There is a tendency to lionize the Supreme Court justices. They are sometimes depicted as intellectual, even moral, giants (in some versions, as avatars of the Old Testament prophets), to be entirely disinterested, to "do their own work" (as Louis Brandeis once said), and to produce a judicial product that reflects deep scholarship and mature, even agonized

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deliberation. In *Casey* v. *Planned Parenthood*, three of the justices sought to place the Court in a tutelary relation to a submissive population whose "very belief in themselves" as "people who aspire to live according to the rule of law" is "not readily separable from their understanding of the Court."

It is hard to blame Kramer for being nauseated by such self-importance. For what is the Court but a committee of lawyers that, in Kramer's words,

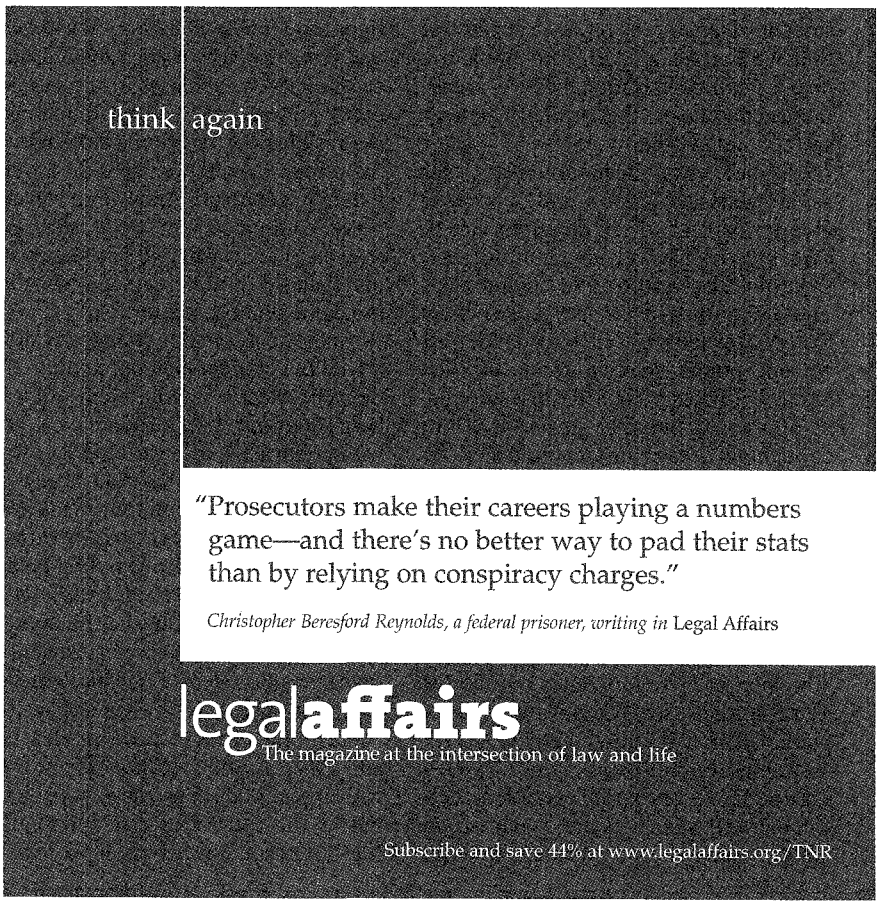
> has not been immune from the same pressures to bureaucratize that changed the rest of government, and like Congress, the Court now leaves most of its business to staff working behind closed doors.... The Justices used to do all their own work. They used to hold oral arguments that lasted for days, laboring assiduously with counsel to understand a case and develop their ideas. They used to discuss each other's opinions in detail and at length. Today, most of the Justices rely on law clerks to prepare a case for them, seldom reading more than a "bench memo" or the parties' submissions. Oral argument is limited to one hour, which the Justices use essentially to get clear on the facts and to signal their thinking to one another. One reason they need to signal each other this way is that they spend so little time talking. Conferences are as short as possible, consisting mainly of terse declamations by each Justice explaining his or her vote, with little or no actual debate or discussion. The detailed legal analysis is done almost exclusively by the clerks, recent law school graduates with at most a year or two of experience.

But if the argument for judicial supremacy is unconvincing, so is the argument for a return to popular constitutionalism. The very concept is barely intelligible. What can it mean for "the people," in Kramer's words, to "constitute the authoritative 'tribunal' to which such conflicts [constitutional disputes] must be submitted?" There is no federal town meeting at which 200 million adult Americans could deliberate and then take a vote. Even if there were, it would be unrealistic to suppose that their vote would be based on their ideas about constitutional law. It would be based on their visceral approval or disapproval of the judicial decision that had been appealed to them as the supreme constitutional tribunal. In practice, popular constitutionalism would be populism *tout court*.

It is unclear how much power the Supreme Court is supposed to have in the theory of popular constitutionalism. If the Court awards judgment to a defendant sued under a statute that the Court deems unconstitutional, the judgment is secure. But should the Court be able to go further and enjoin the enforcement of the statute, or should the government be free to continue to enforce it, albeit future defendants will be almost certain to win their cases? It is one thing for a court to refuse to enforce a statute it thinks unconstitutional, and another thing for it actually to annihilate the statute. The latter smacks of judicial supremacy rather than merely judicial review.

THERE MAY BE A MIDDLE WAY, about which the flag-burning cases are again instructive. There were two almost identical cases. The first involved a state statute criminalizing flag-burning. Promptly after the Supreme Court invalidated it, Congress passed a materially identical law, though of course federal rather than state, and the Supreme Court promptly struck it down too. The doctrine of popular constitutionalism implies that the Court, rather than invalidating the federal law as an impertinence, a challenge to judicial supremacy, should have given respectful consideration to the people's constitutional judgment as embodied in the decision of their representatives in Congress to disagree with the Supreme Court's interpretation of the First Amendment.

We have another example brewing at the moment. After the Supreme Court invalidated state laws banning "partial-birth" abortion, Congress passed by a large margin its own "partial-birth" abortion law, which the president signed and which is now under challenge. We shall see what deference, if any, the Court gives to this re-assertion of a legal position that it held to be unconstitutional. In the second flag-burning case, all the Court did was consider whether the federal statute was materially different from the state statute that it had previously invalidated. Once it concluded that the statute was not, that was the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end of the case. The Court gave no weight to Congress's constitutional judgment.

How much weight should it have given? The theory doesn't tell us, but one thing is clear: Congress is not the people's alter ego. Highly responsive to public opinion though it is, it is not a pipeline in which public opinion enters at one end and a statute articulating that opinion in legal jargon emerges at the other. Think of how the House of Representatives bucked public opinion in deciding to impeach President Clinton. The winner-take-all character of congressional elections, the malapportionment of the Senate, the prevalence of safe seats as a result of "scientific" gerrymandering, the practice of logrolling, the influence of interest groups, the ignorance and apathy of voters, the low voter turnout in most congressional elections, the fact that voters cannot give binding instructions to their representatives, and the lame-duck status of many senators and representatives—all these factors drive a huge wedge between public opinion and congressional legislation.

Popular constitutionalism needs a better institutional form than congressional responses to Supreme Court decisions, as Kramer recognizes in suggesting that we borrow a page from the Europeans. Their constitutional courts are established outside the ordinary judicial system and staffed by judges who serve short (that is, by judicial standards—such as ten years), staggered, and nonrenewable terms, and whose decisions can be overruled legislatively much more easily than our Constitution can be amended. These features make the judges more likely to decide cases in accordance with current public opinion than our life-tenured justices, who if they are appointed at a young enough age and live long enough may serve into a political era remote from when they were appointed.

Conversion to the European system is not a reform that is about to happen. And it is not about to happen for a reason that should lighten Kramer's gloom a bit: "the people" do influence our courts. The Supreme Court is not oblivious to public opinion. It knows that if it gets too far out in front of (or, as in the New Deal era, too far behind) public opinion, there will be retribution. Congress controls the judicial budget. The president and the Senate control new appointments. And Congress can do much to pull the sting of constitutional rulings that it doesn't like, as by defunding abortion clinics, starving legal aid clinics and criminal defenders of funds, curtailing statutory procedural rights, and increasing the severity of criminal penalties, which encourage criminal defendants, in exchange for a sentencing break, to waive the constitutional procedural rights bestowed upon them by the Supreme Court. Powerful as the Court is, it does not control enough of the levers of power to supplant the "political" branches even in areas where it has been particularly aggressive in creating new rights in the name of the Constitution.

Some incremental changes could increase the popular element in our federal judicial system: appointments of older judges (to increase turnover), of judges with political experience, of judges with a less inflated sense of the judicial role than announced in the opinion in the *Casey* case, of judges with greater respect for the democratic process. But would the nation be better off? Would Kramer think it better off? I greatly doubt that he approves of the campaign of popular resistance to *Brown* v. *Board of Education* that the southern states (more precisely, their white populations) waged in the 1950s and 1960s. And he remarks at one point, with apparent disapproval, on the Court's having in the 1950s "capitulat[ed] to McCarthyism," by which I take him to be referring to the Court's refusal to invalidate the measures (by no means limited to the efforts of Joseph McCarthy) taken to root out communists from American public life. I imagine that the *Dennis* decision in 1951, the high-water mark of the Court's condonation of the anti-communist campaign, would have commanded overwhelming public support if put to a vote. One difference between popular constitutionalism and judicial supremacy is that the people weigh public safety more heavily, and civil liberties more lightly, than judges with lifetime tenure. This difference in perspective is an argument for popular constitutionalism—implying, at a minimum, a parity of lay and professional perspectives on the Constitution—that not many liberals will accept.

Finally, I do not believe that many people are even interested in what the Constitution means. Why should they be? As Kramer's colleague Barry Friedman likes to point out, the acid test of rival constitutional theories in the real world, rather than in the theory world of law professors, is an empirical one: not which theory is "correct," but where do they lead to—that is, where would we be if one or another had been in force at some critical period in American constitutional history? To depict the people as constitutional "interpreters" merely entangles popular constitutionalism in a legalism. Judges purport to interpret the laws; so if the people are the highest judges, they must be interpreting too. But isn't that just wordplay? Apart from the stunning lack of realism in supposing that the average person is a competent interpreter of the Constitution (the average person has never read the Constitution), Americans care for results rather than for interpretations. If enough people disapprove of the Supreme Court's decision in a particular case, the Court will, and maybe should, retreat—but not because the people will have sagaciously corrected an error of interpretation. ■

Prime Number

It looks like a man wearing a shawl whose body is
another shawl wrapped around a man who has already
gone to his death in a subway, an office building,
a chair beside a hospital bed—a man leaning against
a lectern, or rising from a seat on a train that is leaving a city
for another city; it looks like sunrise or midnight; it looks
like prayer or hunger whose table and chair is without
company, without the forgiveness of bread and meat;

it looks like a woman sitting on a bus where two dozen
are seated at an intersection where nothing is meant
to keep from occurring; where nothing is meant to return
the explosion to the briefcase of work at her feet,
the weight of the sweater whose sleeves cross her breasts
to the dark emptiness of the body's withdrawal—
shoulder and arm, the wrist and palm's volume of light:
time that crosses the body's corridor, the eye's division.

LAURIE LAMON

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JERUSALEM DIARIST

Anniversary Present

THE FOUNDER OF MODERN political Zionism, Theodor Herzl, died at the age of 44 on July 3, exactly a century ago. It is not a date marked ostentatiously in Israel. After all, his achievement is taken for granted by most Israelis, and it would be odd if it were not—given that the Jewish state has turned out to be almost precisely the secular success Herzl envisioned. But many Europeans still can't absorb this reality. In fact, it rather sticks in their craw. A few weeks ago, for example, Michel Rocard, a former prime minister of France, pronounced the very creation of Israel a "mistake," although he apparently doesn't think that of any of the piteously failed states surrounding it. And, perhaps from the French perspective, Israel has indeed been a mistake—it has certainly been an impediment to French neocolonial interests among the Arabs.

GREAT BRITAIN WAS, FOR A TIME, Zionism's essential partner, through the Balfour Declaration, which was confirmed by the League of Nations, and in the early years of the Mandate, conferred on the United Kingdom by the League. But, long before the Brits started appeasing the Nazis, they were already appeasing the most intransigent Arabs. (The Arabs didn't yet term—or even imagine—themselves Palestinians until 1967, when they fell under Israeli rule, which explains why Jordan was able to rule the West Bank and Egypt the Gaza Strip almost without indigenous Arab challenge during the 18 years before they lost the Six Day War. By contrast, the Palestinian nomenclature was used by and about the Jews until they achieved independence in 1948. An old ditty from my childhood went: "If you like salami, join the Jewish army; fight, fight, fight for Palestine.")

NOW, MANY BRITS FEIGN CONCERN THAT Israel is not really the Zionist utopia some Jews—but certainly not they—hoped it would be. It is especially odd to read, on the centenary of Herzl's death, a lament for the eroded utopian vision of Labor and kibbutz Zionism (a dream Herzl did not share) in an article by Harvey Morris in the July 3 edition of the echt capitalist, ergo non-Edenic *Financial Times* of London. After all, a quintessential lesson of the modern era is that utopianism is, itself, a mortal danger to the good society. In his essay, Morris is struck not by the normal variety of life in Israel, but by three extreme representations: a politically alienated leftish painter, a messianic West Bank settler, and an idiosyncratic workman who calls himself a Palestinian Jew. Altogether, these may represent 5 percent of the Israeli population, probably less. He also writes about the usual "social tensions—between rich and poor, secular and religious, Ashkenazi and Sephardi," which he says are expressions of the "follies" of Zionism rather than instances of quotidian differences everywhere. But the greatest folly of the Zionists, according to Morris, is "the failure to recognize the rights of the other nation that exists in their midst."

THIS STANDS HISTORY ON ITS HEAD. From 1922 onward, the Zionists accepted every partition plan for Palestine put to them by any party (save the 1930 White Paper authored by Lord Passfield, the Stalinist apologist Sidney Webb, that would virtually have halted Jewish immigration); the Arabs rejected each. In 2000, Yasir Arafat declined Bill Clinton's proposals, which Ehud Barak had accepted, reestablishing, with minor compensating adjustments, the cease-fire lines of 1949, without even submitting a counterproposal. Who, then, failed "to recognize the rights of the other nation"?

BUT EVEN HISTORY STOOD ON ITS HEAD has consequences. The four-year intifada of blood and fury launched by the Palestinians in response to the Barak-Clinton offer has fizzled, its new headmen fearful and in hiding, its foot rabble bewildered. Every cliché put forward by Israel's critics has been proved false. A favorite from Cambridge dinner parties: Each targeted assassination by Israel of terrorist leaders like Sheik Ahmed Yassin and Abdel Aziz Rantisi will result in ten more suicide bombers volunteering both to murder and to die. Even among the followers of Hamas, however, there is no infinite stream of killers eager to couple with virgins. When an Israeli rocket fired from an Apache takes out a Hamas chieftain riding a motorcycle through traffic, no other terrorist leader is safe. (Except in prison, where many of them reside.)

AND, OF COURSE, THERE IS THE UNFINished fence, which has already stemmed the flow of slaughterers into Israel. As for the fence's trajectory, Israel's Supreme Court has just ruled that it must be shifted to limit the damage to local Palestinians—whose needs sometimes outweigh considerations of defense. In the same week, then, the highest courts of our country and of Israel have limited what the executive may do in pursuit of security. How many other countries, having suffered what Israel and the United States have at the hands of terrorists, would have been so scrupulous?

AN OLD FRIEND OF MINE, A HERO OF the Yom Kippur War and a veteran of Israel's peace ranks, told me the other day that his movement was in utter disarray. "It is cognitively dissonant," he said, "to support Sharon, which we must do. After all, our experience with him is bitter. But he will get out of Gaza and he wants to withdraw from much of the West Bank. This is the lesson he has learned." What's more, my friend confided, "There is another lesson that we in the peace camp must learn. It comes from our experience of the last years with the Palestinians, that they take concessions for weakness. Every concession encourages more demands. Since there are limits to the concessions we can make, and these are less than the perilous ones we made in 2000 at Camp David and Taba, we have to give only what we can, and not what the Palestinians expect." And then, my friend added, "It may just be that negotiating with the Palestinians is a charade. But they do understand power. That is why the intifada is coming to an end. They know that they have been defeated. Israel never drew up the map with which it can live. That is what we are doing now. But it is also a map that allows for a contiguous Palestine. It is a mark of our victory, and you will see how many Arabs will struggle to be on the Israeli side of the border rather than on the Palestinian side." Some folly, this Zionist enterprise.

MARTIN PERETZ

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Price Controls on Gasoline? Bad Idea

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Americans are understandably upset by the high prices they've been paying for gasoline. Many think that the cause is oil company greed and that the solution is government-enforced price controls. But price controls on gasoline are a terrible idea. They would cause shortages and lineups and would hurt producers and consumers.

Here's why. What determines the price of gasoline is the amount producers are willing to supply at various prices and the amount drivers demand at various prices. At the current price of gasoline, say $2.00, the amount drivers want to buy roughly equals the amount producers want to sell. That's why there are no gas lines. Such a "market-clearing price" evolves in every competitive market.

What happens, then, when the government decrees that the price of gasoline be no higher than, say, $1.80. The obvious answer is that consumers now can get their gas for 20 cents a gallon less. But that answer is incomplete.

At a price of $1.80, consumers will want more than they wanted at $2.00. One of the things economists are surest of is that we want more of a good when its price falls. At that lower price, producers want to supply less. The necessary result, therefore, is a shortage: the amount demanded exceeds the amount supplied.

Shortages lead to lineups. Consumers then compete with one another, not just by paying money but by spending time in line. Economists call this lost time a "deadweight loss," a loss to some that is a gain to none.

During the 1979 gasoline shortage, I calculated that the 80-cent-per-gallon price control caused consumers to spend about $1.10 a gallon (30 cents per gallon in lost time) and that if the price controls had been removed, the market-clearing price of gasoline would have been $1.00. Consumers actually paid more than they would have without price controls, and producers made 20 cents less. Both lost.

Many people are convinced that high gasoline prices are due to oil companies' greed. But that explanation is insufficient. Why such sudden greed? Weren't oil companies greedy a year ago, when prices were lower? To explain a change in something, you need to point to something that changed.

What changed is the world price of oil, which increased by about $14 between May 2003 and May 2004. Each dollar increase in the price of oil translates into roughly a 2.5-cent increase in gasoline prices. About 35 cents of the 50-cent-per-gallon increase in the price of gasoline, therefore, is due to world market conditions, one of which is the reduced oil production in Iraq.

Also, federal regulations fragment what was once a national gasoline market. The Environmental Protection Agency decrees that certain kinds of gasoline be used in certain regions. When a refinery or pipeline goes down in certain markets, such as California, gasoline sellers can't legally buy from other markets. The result: wild swings in gasoline prices. The regulations also make gasoline more expensive.

Price controls are a bad idea. Here's a better one: reduce gasoline taxes.

—David R. Henderson

David R. Henderson is a research fellow at the Hoover Institution and an economics professor at the Naval Postgraduate School.

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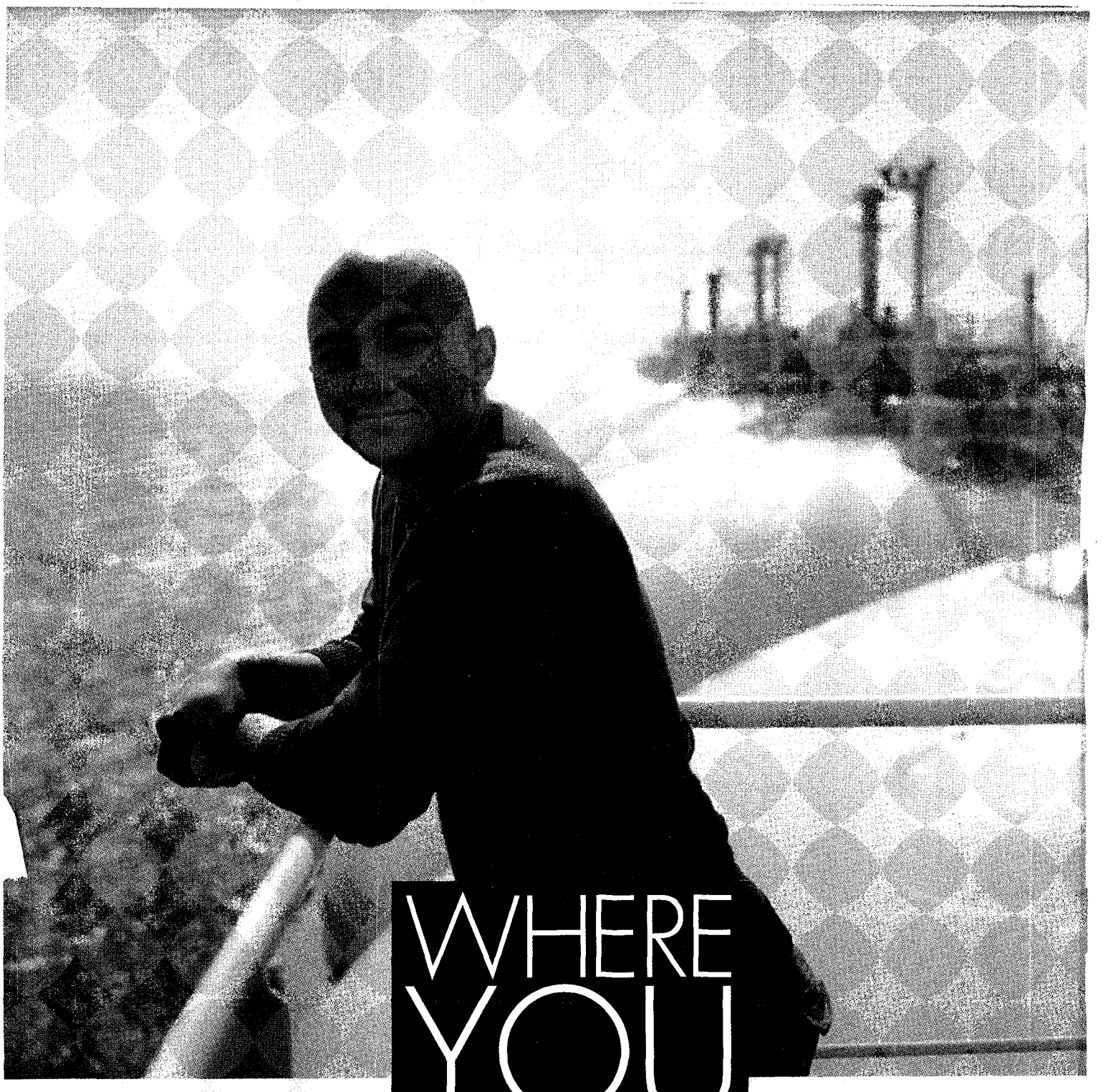

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Behind Sam Singh, master of a Shell G Class tanker, sit 135,000 cubic meters of liquefied natural gas (LNG). On deck, it's a balmy 77°F. In the insulated LNG containers, it's minus 260°F. Sam's tanker is just one in our specialized fleet that carries over nine million tons of LNG around the world every year. They bridge the gap between places like Brunei, Oman and Nigeria, with an abundance of natural gas, and markets with a rapidly rising demand like the U.S. We have been investing in our LNG operations for over 40 years. Now these efforts are paying off handsomely. Within 10 years, the number of our LNG plants will have doubled. So too will the number of countries we supply. Why? Because by 2025 gas, the cleanest fossil fuel, could well have overtaken oil as the world's predominant source of energy. Developing and connecting the gas markets of the world is an increasingly crucial business in which no one matches our expertise and commitment. And if people like Sam have anything to do with it, no one ever will. Visit www.shell.com/lng to find out more about our Gas & Power business.

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